
Annual Report of the Complaints Commissioner for 2003/04





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Executive Summary

Background to the Complaints Scheme

The Financial Services Authority (FSA) is required by the Financial Services and Markets Act 2000 (FSMA) to operate a Complaints Scheme for the investigation of complaints against itself. Details of how the Scheme works are at Appendix A. The Scheme came into operation on 3 September 2001. As part of the complaints arrangements there must be a Complaints Commissioner who is independent of the FSA and able to conduct impartial investigations. The first Complaints Commissioner is Rosemary Radcliffe who was appointed on 3 September 2001 for a three year term. The Commissioner is required to publish an Annual Report with information on complaints investigated during the year, the Commissioner's findings, and any trends and lessons that the FSA should learn. This Report meets that requirement. It is the Commissioner's third Annual Report and covers the year from 1 April 2003 to 31 March 2004.

Overview of the Year

The Commissioner received 178 **new enquiries and complaints**¹ during 2003/04; an increase of 27% over the previous year. The number of **enquiries and complaints** concluded was 175, which represented an even larger increase (42%) over the previous year. By the end of the year enquiries and complaints in progress stood at 63, compared to 42 at the beginning of the year.

Looking at the **organisation to which enquiries and complaints related**, only 48% of enquiries and complaints received were found, on investigation, to relate to the FSA. More than one third proved to relate to financial services firms or to the way in which the Financial Ombudsman Service (FOS), or a predecessor body of the FOS, had handled a complaint and were thus the province of the firm in question, the FOS or the FOS Independent Assessor. Notwithstanding efforts by all parties to explain the various arrangements across the financial services industry for handling complaints, there is still confusion as to where complaints should be directed. Every opportunity still needs to be taken to explain the arrangements to those who may need to access them.

Turning to the **type of complainant**, by far the greater number of enquiries and complaints received in 2003/04 came from individual members of the public. Only 13 out of 178 enquiries and complaints came from financial services businesses and these were predominantly from smaller Independent Financial Advisers. No enquiries or complaints were received from major financial services firms.

Looking at the **source of complaints**, more than two thirds of enquiries and complaints received in 2003/04 were sent directly to the Commissioner. A further 35 cases were referred to the Commissioner for review of an FSA decision to exclude a complaint from the Scheme or not to investigate it, either in

¹ Numbers of enquiries and complaints are based on files opened by the Commissioner. Files are opened in all cases where the Commissioner is in correspondence with or about an actual or potential complaint; they thus include cases that do not ultimately give rise to a complaint under the Scheme.

whole or in part². Only 20 complaints were sent to the Commissioner having been the subject of a Stage 1 investigation by the FSA covering the entirety of the matters complained of.

With regard to the **subject matter of complaints**, out of the 85 enquiries and complaints found on investigation to be complaints about the FSA, more than a quarter had a significant component relating to administrative problems or to the FSA's own handling of a complaint. Complaints that were about other substantive issues also quite frequently had a more minor administrative component in addition. A large proportion of complaints, 43%, related to the FSA's supervisory activities. There have been only a small number of complaints regarding authorisation or enforcement matters.

Ten **Stage 2 investigations** were completed by the Complaints Commissioner during 2003/04; two of these, by agreement with the complainants, were covered in a single Final Report as their subject matter overlapped substantially. In addition, two complainants agreed to have their complaints, which were about the same issue, investigated and reported upon as a single matter. The Introduction and Summary of eight of the nine Final Reports were published on the Commissioner's website, together with the FSA's responses. One Final Report was, at the complainants' request, not published. The Commissioner did not uphold any complaints of a very serious nature, such as those alleging gross misconduct. Full details relating to Stage 2 investigations are at Appendix B; each case had its own special features but the following findings by the Commissioner were common to more than one of the reports.

- Delays on the part of the FSA in answering letters or failure to acknowledge, review or answer letters were an issue in the majority of cases. These problems manifested themselves across the FSA.
- A failure to comply with the service standards and procedures of the Complaints Scheme was an issue in many of the cases. Failures included the time taken to acknowledge or reply to letters or to carry out the Stage 1 investigation; inadequacies of the Stage 1 investigation in respect of thoroughness and impartiality and the lack of a documented trail of decisions and findings; and inappropriate choice of Stage 1 investigators.
- Problems arose in connection with FSA investigations in respect of the FSA's dealings with customers or employees of the firm under investigation, whether directly affected or providing information.
- There were problems with the inclusion in the FSA's letters of potentially misleading statements or incorrect information, and with letters or other responses addressing questions or allegations different from those posed by the correspondent, including mistaken assumptions that an earlier issue was being referred to.

The Commissioner made a number of **detailed recommendations** in her Stage 2 reports. In all cases where she found that the FSA had made a mistake, or not followed their own procedures or met their own service standards, she recommended that the FSA should apologise to the complainant where they had not already done so. In one case she recommended an ex gratia payment should be made. In a number of cases she recommended changes to FSA procedures.

² Under the Scheme, if the FSA decide not to admit a complaint to the Scheme, or not to investigate it, they must inform the Commissioner, who then decides whether or not it falls within the scope of the Scheme and should be investigated.

The Commissioner considers that the **FSA's responses to her recommendations** have been broadly positive. The FSA have accepted the large majority of the Commissioner's findings and recommendations.

The number of formal **Stage 2 investigations in progress** at the end of the year reached 26, compared to only 14 at the end of the previous year. Six of these, however, commenced only during the last month of the year, and five of them arose purely because of delays on the part of the FSA in completing Stage 1 investigations. Two investigations had been in progress for more than 30 weeks; these were investigations raising complex issues where both the FSA and the complainant had to devote considerable time to seeking information that was material to the issues raised by the case. Two Preliminary Reports were issued just before the end of the year, to be finalised shortly after the year-end.

During the year, the Commissioner received 35 **referrals from the FSA²** of matters that they had decided to exclude from the Scheme or not to investigate; this was somewhat fewer than in 2002/03. Significantly, the Commissioner has this year disagreed with the FSA's decision in very few cases. Only two referrals made during 2003/04 had, by the end of the year, resulted in the Commissioner disagreeing with the FSA and deciding to undertake her own Stage 2 investigation. Five referrals were still under consideration at the end of the year.

A small number of **complaints relating to Equitable Life** continued to be received during the year, but only one new complaint was received after the publication of the Report on the Equitable Life Inquiry by Lord Penrose. The Commissioner's role in relation to Equitable Life is defined under the terms of the Complaints Scheme: she can only consider complaints about the actions or inactions of the FSA (or predecessor bodies) not of Equitable Life itself; and she may not consider complaints relating to the prudential regulation of Equitable Life prior to N2, which are the province of the Parliamentary Commissioner for Administration. Each complaint made to the Commissioner has to be considered on its merits but the Commissioner had earlier taken the view that, in cases which might fall within her jurisdiction, it was likely to be in the interests of the complainant to defer a final decision on jurisdiction and the undertaking of any Stage 2 investigation until after the reports of the Parliamentary Commissioner for Administration and of Lord Penrose were published. She has continued with this policy this year. The Parliamentary Commissioner published her Report on 30 June 2003, although it is possible that her investigation may be re-opened. Lord Penrose published his Report on 8 March 2004 and, following this, the Complaints Commissioner decided to review all the deferred Equitable Life cases to see whether or not they fall within her jurisdiction and should be investigated by her. This review was launched following publication of the Penrose Report and will be completed as soon as possible.

During 2003/04 the FSA carried out a **review of the Complaints Scheme**. The Commissioner contributed a paper setting out her views. The FSA Consultation Paper CP 04/6 "Changing the FSA's Complaints Scheme" was published on 30 March 2004; the Commissioner will be making a formal response in due course. The Commissioner and the FSA have a common view of many of the changes that are required to the complaints handling arrangements. It is proposed that the broad definition of a complaint should be retained but a graduated proportionate approach to complaints of varying degrees of seriousness should be developed. In addition, there should be some changes to the way that the FSA deals with complaints internally, including improvements to the oversight of the overall operation of the Scheme.

² Under the Scheme, if the FSA decide not to admit a complaint to the Scheme, or not to investigate it, they must inform the Commissioner, who then decides whether or not it falls within the scope of the Scheme and should be investigated.

Operations, Resource Management, Communications and Performance

With regard to **operations and resource management**, since the inception of the Scheme it has proved difficult to predict both the volume of complaints and enquiries and the composition and complexity of the Commissioner's workload and thus the resources required to meet it. In recognition of this problem, the **operating model** adopted by the Commissioner is to operate her Office on the basis of a small core team supported by additional resources on an "as-needed" basis. The additional resources are from two sources: a small panel of experienced investigators; and resource provided by professional advisers.

The Commissioner agreed a **budget** with the FSA for 2003/4 that reflected this model of operation. The budget assumed a 'base' caseload of routine enquiries and complaints, and corresponding legal and other professional advice. The need for advice on Equitable Life was also anticipated in the budget. Expenditure on large and/or complex investigations arising during the year was not provided for in the 'base' budget. This expenditure, together with expenditure on further professional advice on special topics, was, with the agreement of the FSA, treated outside the base budget as additional expenditure, with budgets for each project notified to the FSA in advance during the course of the year.

The total **cost of the Commissioner's operations** in 2003/04 was £859,000, of which £276,000 represented the cost of special investigations and projects not included in the 'base' budget. The estimated cost of individual Stage 2 investigations completed during 2003/04 was highly variable; five investigations were estimated to cost less than £10,000 each whilst three cost in excess of £40,000.

With regard to **reporting and communications**, in addition to the Stage 2 reports and the Annual Report that the Scheme requires, the Commissioner produced quarterly reports for the FSA Board which were also published on her website. She attended meetings of the Practitioner Panel, the Small Business Practitioner Panel and the Consumer Panel during the year, and gave evidence in person to the Treasury Committee of the House of Commons. In addition she provided written evidence to the House of Lords Committee on the Constitution which was undertaking an inquiry into the accountability of regulators, with a special focus on the regulation of financial services.

With regard to **liaison with the FSA**, the Office of the Complaints Commissioner is and must be fully independent of the FSA. It is in the interests of complainants, however, for the staff of the Office of the Complaints Commissioner and those in the FSA responsible for administering the Scheme to liaise regularly and the Commissioner has had regular progress and policy meetings with the FSA during the year and has also benefited from helpful briefing meetings with FSA staff. The Commissioner also suggested, and the FSA agreed, that FSA Internal Audit should take on responsibility for monitoring implementation of the Commissioner's recommendations made in her

Stage 2 reports. The Commissioner welcomed the major internal awareness campaign undertaken by Company Secretariat during 2003/04 to promote understanding of the Scheme within the FSA. Some problems have, however, arisen during the year. These have included delays, substantial in some cases, on the part of the FSA in providing information and making staff available for interview; these delays were, however, being addressed at the end of the year by more intense supervision and monitoring within the FSA. Challenges to the scope of the Commissioner's decisions have also been made in some cases, resulting in further delays, and poor quality documentation provided by the FSA in a number of instances has proved particularly and unnecessarily time-consuming to deal with.

At the start of her term of office, the Commissioner set out **five objectives against which her performance could be measured**. In summary, performance against these objectives during 2003/04 was as follows.

1. The statutory responsibility of the Complaints Commissioner to ensure that independence is maintained and that complaints are investigated without favouring the FSA. **Achieved but needs to be protected for the future.**
2. The need for potential complainants to be aware of the Complaints Scheme and how it works and to be able easily to access it when they need it. **Some progress, but more to do.**
3. The need for complaints to be dealt with quickly and fairly, and for like cases to be treated alike. **Achieved in part, but continuing problems with delays.**
4. The need for highly cost-effective use of resources to support a complaints scheme the ultimate cost of which is borne by the financial services industry. **Achieved in part, but more to do.**
5. The need to assist the FSA as well as complainants to reap the benefits of the Complaints Scheme, by helping them to ensure that mistakes, once identified, are rectified and processes and procedures improved in the light of experience. **Progress, but more to do.**

Issues and priorities for the future

The following matters constitute, in the Commissioner's view, the key issues and priorities for 2004/05:

- **Transition and succession:** The Commissioner's term of office ends at the beginning of September 2004. She has provided advice to the FSA on steps to ensure a smooth transition.
- **A legal identity for the Office of the Complaints Commissioner:** The need to appoint a successor has thrown into focus the need to resolve some important issues relating to the structure and legal status of the Commissioner and her Office. The legislation and the Scheme are silent on these matters. The current Commissioner has been able to operate without formal

structures by obtaining support from staff who are either self-employed or are employed by third parties but this is less than satisfactory in many respects. Arrangements are for the FSA to make, but at present it appears that a Company Limited by Guarantee would be the most suitable legal "wrapper" for the Commissioner's operations.

- **Implementing changes to the FSA's Complaints Scheme:** The Commissioner will be making a formal response to the FSA Consultation Paper CP 04/6 "Changing the FSA's Complaints Scheme". Once the outcome is known, there will be a great deal both for the FSA and the Commissioner to do to take any detailed changes into implementation.
- **Managing the workload:** Indicators suggest that volumes in 2004/05 are likely to be at least at the same level as 2003/04: the FSA's responsibilities are increasing as they take on regulation of general insurance broking and mortgage advice; and there is continuing concern over mortgage endowments and other investor issues that are likely to give rise to complaints. The impact of changes to the Scheme on the Commissioner's workload is at present unclear, but there is the potential for economies to be made in the Commissioner's operation if, as a result of the review of Scheme arrangements, changes are made to the way the FSA operates.
- **The scope of the Scheme:** It will continue to be a priority to explain the complaints arrangements to those who may need to access them, and to aid understanding of the respective roles of the various bodies involved; there will also be a continuing need to have adequate numbers of staff available across the FSA who understand the Scheme and the quite complex provisions of the Handbook that govern its scope and operations.
- **The Scheme's users:** Very few of the enquiries and complaints received by the Commissioner are from Independent Financial Advisers, approved individuals and officers of other organisations. The Commissioner is concerned that the Scheme may not be affording industry practitioners the avenue for obtaining redress in respect of errors by the regulator that was intended at the time the Scheme was designed. Furthermore, if the Scheme continues to be used primarily by consumers, it may be worth considering whether its design and promotion best meet their needs. The views of the Practitioner and Consumer Panels are particularly relevant here and the Commissioner will discuss the issues with them.
- **Working with the FSA:** The Commissioner sees the Complaints scheme as a mechanism through which the FSA can benefit as an organisation. The current Commissioner has looked for opportunities in the way she carries out her role to enable the FSA to reap these benefits. With a new senior management team in place in the FSA, and a new Commissioner from 2004, further impetus in this direction in 2004/05 will be timely.

1 Introduction

This is the third Annual Report of the Complaints Commissioner, covering the year from 1 April 2003 to 31 March 2004. It contains the following sections:

- **Background to the Complaints Scheme**

This section provides a brief description of the Complaints Scheme and the role of the Commissioner.

- **Overview of the Year**

This section looks first at the volume of enquiries and complaints received during the year and the number of enquiries and complaints concluded and in progress. It goes on to analyse the enquiries and complaints received in more detail, looking at the organisations to which complaints relate; the types of complainant; the source of the complaints; and their subject matter. It then looks at two areas that are of particular importance to the operation of the Scheme and to the work of the Commissioner: Stage 2 investigations; and referrals to the Commissioner by the FSA of complaints the FSA has excluded from the Scheme or declined to investigate. It concludes with some information on Equitable Life-related complaints, and on the Review of the FSA Complaints Scheme undertaken during the course of 2003/4.

- **Operations, Resource Management, Communications and Performance**

This section looks at the operations of the Commissioner's Office and the resources applied during the year to the discharge of the Commissioner's remit. It also comments on the Commissioner's approach to communications, including reporting; and the working arrangements that exist between the Commissioner's Office and the FSA. It concludes with an assessment of performance against the Commissioner's objectives as set out in her first Annual Report.

- **Issues and Priorities for the Future**

This section comments on issues and priorities for the coming year, 2004/05, in the light of the conclusions drawn in the earlier sections.

2 Background to the Complaints Scheme

The Financial Services Authority (FSA) is required by the Financial Services and Markets Act 2000 (FSMA) to operate a Complaints Scheme for investigation of complaints against itself. The Scheme came into operation on 3 September 2001. As part of the complaints arrangements there must be a Complaints Commissioner who is independent of the FSA and able to conduct impartial investigations. The first Complaints Commissioner is Rosemary Radcliffe who was appointed on 3 September 2001 for a three year term.

FSMA specifies the overall requirements of the Complaints Scheme; details are specified in the FSA Handbook (under the section entitled: Complaints Against the FSA (COAF)). The Scheme is in two parts: the Main Scheme deals with complaints about the way the FSA has carried out, or failed to carry out, its functions under current legislation; and the Transitional Scheme deals with certain complaints under earlier legislation.

Appendix A and Figure 1 explain how the Complaints Scheme works. In summary, there are two stages for handling a complaint. First, the FSA determines whether or not, in its view, the complaint falls within the Complaints Scheme and should be investigated; if it does, the FSA will carry out its own investigation, known as the Stage 1 investigation. If a complainant is dissatisfied with the outcome of the FSA's investigation, or with the progress of the FSA's investigation, the complainant may refer the complaint to the Complaints Commissioner. In addition, if the FSA decides to exclude a complaint from the Complaints Scheme, or not to investigate it, the FSA must inform the Complaints Commissioner, who has the power to review the complaint to decide whether or not it should be investigated. This constitutes the second stage of the investigation process.

The role of the Complaints Commissioner includes the conduct of her own investigation, known as the Stage 2 investigation, into any complaint that she decides to investigate. She reports to the complainant and to the FSA on the results of her investigation and may decide to publish all or part of her report. If the report is critical of the FSA, the Commissioner may require the FSA to publish its response.

In addition to reporting to the complainant and the FSA on the results of her investigations the Commissioner is required, under the terms of the Complaints Scheme, to publish an Annual Report with information on complaints investigated during the year, the Commissioner's findings, and any trends and lessons that the FSA should learn. This Report meets that requirement.

3 Overview of the year

3.1 Volume of enquiries and complaints received during the year

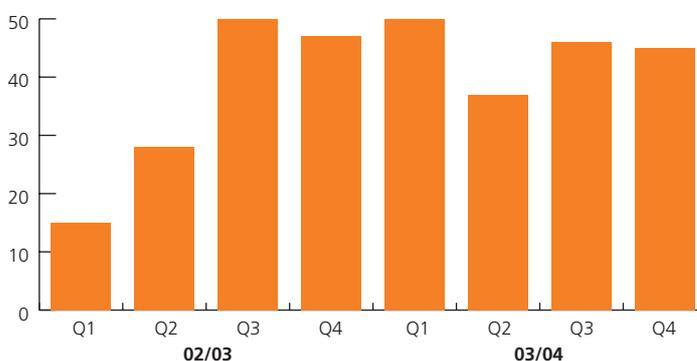
Table 1 below shows the number of enquiries and complaints¹ received by the Commissioner during 2003/04. The volume of new enquiries and complaints received during the year increased to 178 for the year ended 31 March 2004, compared with 140 in the previous year and 65 in the seven-month period to 31 March 2002. In percentage terms the increase was 27% over 2003/04, very similar to the percentage increase of 26% on an annualised basis the previous year.

The chart below shows a quarterly breakdown of new enquiries and complaints received for 2002/03 and 2003/04. From the third quarter of 2002/03 to the end of 2003/04 the number of new enquiries and complaints received has been in the range 45-50 each quarter, with the exception of the second quarter of 2003/04 when the number was slightly smaller at 37, probably reflecting a seasonal summer dip.

Table 1 Enquiries and Complaints Received

	2003/04	2002/03	1 Sept 01 to 31 Mar 02
Enquiries and complaints in progress at start of period	42	16	–
New enquiries and complaints received	178	140	65
File re-opened from earlier period	18	9	–
Enquiries and complaints concluded	(175)	(123)	(49)
Enquiries and complaints in progress at end of period	63	42	16

New Enquiries and Complaints Received by Quarter, 2003/04 and 2002/03



¹ Numbers of enquiries and complaints are based on files opened by the Commissioner. Files are opened in all cases where the Commissioner is in correspondence with or about an actual or potential complaint; they thus include cases that do not ultimately give rise to a complaint under the Scheme.

3.2 Enquiries and complaints concluded during the year

Table 1 shows that the numbers of enquiries and complaints concluded in 2003/4 amounted to 175 compared to 123 in 2002/03, an increase of 42%. On an annualised basis, the increase in 2002/03 over 2001/2 was similar at 46%.

A more detailed analysis of enquiries and complaints concluded during the year is given in Table 2 below.

Table 2 Enquiries and Complaints Concluded

	2003/04	2002/03	1 Sept 01 to 31 Mar 02
Enquiries and complaints determined to be outside the scope of the Scheme ²	104	75	30
Complaints relating to Equitable Life where investigation postponed ³	0	8	9
Initial enquiries not followed up by complainant	10	6	4
FSA response made and file closed (no further action)	17	11	4
Stage 2 investigation concluded	10	4	–
Complaints not investigated ⁴	28	18	2
Investigation not taken up ⁵	2	1	–
Stage 2 investigation not pursued ⁶	4	–	–
Total enquiries and complaints concluded	175	123	49

Table 2 shows that of the 175 enquiries and complaints concluded in the year 104, or 59% of the total, were found by the Commissioner to be outside of the scope of the Scheme, almost exactly the same proportion as in the previous year and in the seven-month period to 31 March 2002.

The Table also shows that a further 28 complaints were referred to the Commissioner because the FSA had decided to exclude them from the Scheme or not to investigate them and the Commissioner, after investigating, agreed with the FSA's decision. Thus, of the 175 enquiries and complaints concluded during the year, no fewer than 132 were, when investigated by the FSA and/or the Commissioner, found to be outside the scope of the Scheme. This issue is returned to below; see Section 3.4.1.

2 Many of the cases found by the Commissioner to be outside the scope of the Scheme were cases falling within the remit of the Financial Ombudsman's complaints arrangements. See below for further details.

3 The Commissioner decided to postpone the investigation of certain Equitable Life-related complaints until after Lord Penrose reported. See below, Section 3.7, for further details.

4 Complaints where the Commissioner has reviewed the FSA's decision not to investigate, or not to admit to the Scheme, and decided to take no further action. See below, Section 3.6, for further details.

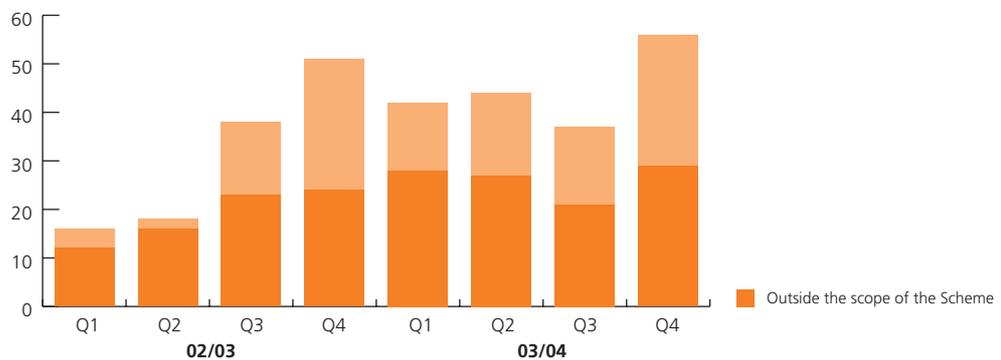
5 Complaints where the Commissioner has reviewed the FSA's decision not to investigate or not to admit to the Scheme and disagreed with the FSA's decision but where the complainant has not taken up the Commissioner's offer of an investigation.

6 Complaints where the matter was resolved during the course of a Stage 2 investigation, or the investigation was not pursued because the complainant stopped responding.

Ten cases were concluded this year with the issue of Final Reports on Stage 2 investigations, compared to only four in the previous year. A further six Stage 2 investigations were not pursued, either because the complainant chose not to accept the Commissioner's offer of a Stage 2 investigation or the matter was resolved during the course of the Stage 2 investigation or the complainant stopped responding.

The chart below shows a quarterly breakdown of enquiries and complaints concluded in 2002/03 and 2003/04. The increase in the fourth quarter of each year reflects to some extent extra resource applied at the end of the year. It is noticeable that the proportion determined to be outside the scope of the Scheme, while varying slightly from quarter to quarter, has been in the range one half to two thirds in each of the last six quarters. Increases in the total number of cases concluded is thus not due to a disproportionate increase in the number of misdirected, easy to resolve enquiries and complaints.

Enquiries and Complaints Concluded by Quarter, 2003/04 and 2002/03: Total and number outside the scope of the Scheme



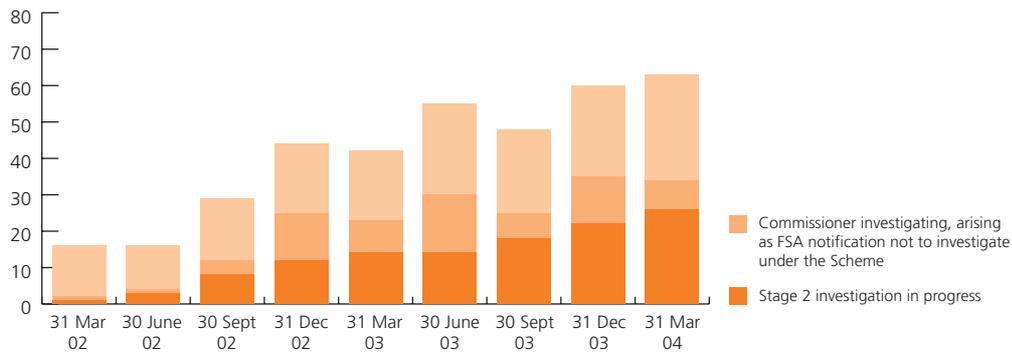
3.3 Enquiries and complaints in progress during the year

Notwithstanding that 175 enquiries and complaints were concluded during the year, Table 1 shows that the number in progress at the end of the year stood at 63, a level 50% higher than at the end of the previous year. Only 42 cases were in progress at the beginning of the year.

Table 3 below gives a breakdown of cases in progress at the end of the year, and the chart below shows the quarterly pattern throughout 2003/4 and 2002/3. Stage 2 investigations, which have increased in number every quarter since the Scheme came into operation, account for 12 out of the increase of 21 in the total number of the cases in progress. In the previous year, part of the increase was accounted for by an increase in the number of cases arising as notifications of FSA's decisions not to investigate or to exclude from the Scheme. The same is not true this year. At the end of the year only 6 of the cases still being reviewed by the Commissioner had arisen in this way. Each of these groups of cases is discussed further below; see Sections 3.5 and 3.6.

Table 3 Enquiries and Complaints in Progress at end of quarter

	31 Mar 04	31 Mar 03	31 Mar 02
Complaints Commissioner Stage 2 investigation in progress <i>Of which arising as a result of CC disagreeing with FSA decision not to investigate under the Scheme</i>	26	14	1
	6	4	–
FSA response being considered by complainant	0	1	2
FSA and/or Commissioner investigating, reviewing files, or providing further information <i>Of which arising as FSA notification of decision not to investigate under the Scheme</i>	37	26	10
	6	9	1
Complainant asked to provide further information	–	1	3
Total enquiries and complaints in progress at end of period	63	42	16

Enquiries and Complaints in Progress at end of Quarter, 2003/04 and 2002/03: Total, Stage 2 investigations in progress, and under review by the Commissioner arising as FSA notification not to investigate under the Scheme.

3.4 Analysis of new enquiries and complaints

3.4.1 Organisation to which complaint relates

Table 4 below gives information about the organisations that were the subject of the enquiries and complaints received during the year. The table shows that only 48% of enquiries and complaints received were, on investigation, found to relate to the FSA (although in a number of instances quite substantial investigation was necessary to establish that this was the case). The Commissioner's remit only extends to complaints about the FSA and predecessor bodies.

Table 4 Organisation to which complaint relates

Organisation to which enquiry or complaint relates	2003/04 Number	2003/04 %	2002/03 %
Financial Services Authority	85	48	55
Financial Ombudsman Service	15	8	10
Financial services firm	48	27	27
Other	30	17	8
TOTAL	178	100	100

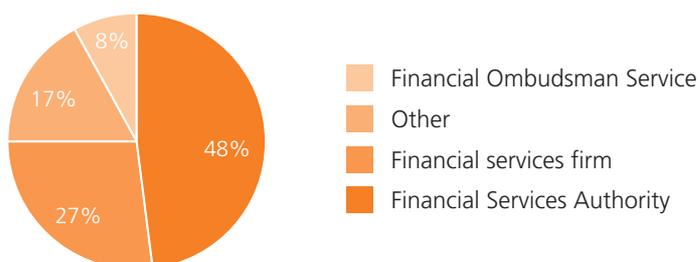


Table 4 also shows that more than one quarter of the enquiries and complaints received proved to be about financial services firms and were thus properly the province of the firms themselves or the Financial Ombudsman Service (FOS). This indicates that the problem identified in the first Annual Report and commented upon again last year (of misdirection of complaints) is not yet fully solved: more clearly remains to be done to inform potential complainants about the respective roles of FOS, the FOS Independent Assessor, and the Complaints Commissioner.

Additionally, 8% of enquiries and complaints proved to be about the way in which FOS (or a predecessor body of the FOS) had handled a complaint. This is also a matter for FOS or the FOS Independent Assessor; however, a few complainants feel strongly that the FSA, as regulator, ought to be concerned about the practices and performance of FOS, albeit that under the current arrangements FOS is clearly operationally independent of the FSA. A number of complainants are unaware that in some circumstances they may be able to take a dispute about FOS's handling of their case to the FOS Independent Assessor when they have exhausted FOS's own arrangements, but that such matters do not fall within the jurisdiction of the Complaints Commissioner.

There also continues to be confusion as to the distinct identity of the Complaints Commissioner from that of the FSA, and her independence of the FSA. The FSA's and the Commissioner's websites give direction to complainants about where they should go for help, but the range of different arrangements for the handling of complaints relating to financial services can be confusing to consumers. Every opportunity still needs to be taken to explain the complaints arrangements to those who may need to access them.

3.4.2 Type of complainant

Enquiries and complaints have come predominantly from individual members of the public rather than from organisations, as shown in Table 5 below. Only 13 enquiries and complaints received in 2003/04 came from independent financial advisers, approved individuals or officers of other organisations such as action groups. There were no enquiries or complaints from major financial services firms.

Table 5 Type of complainant

Complainant	2003/04 Number	2003/04 %	2002/03 %
Individual members of the public and ex-employees of financial services firms	165	93	80
Independent Financial Advisers, approved individuals and officers of other organisations	13	7	20



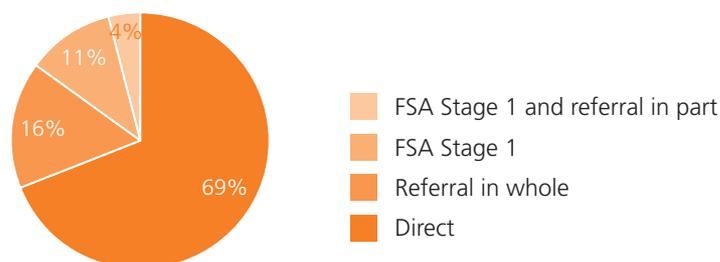
The Table illustrates starkly that the Scheme is not in practice being used to any great extent by the industry, which is perhaps surprising as, when the Scheme was being debated, it was the industry that was envisaged as the likely beneficiary of the arrangements that gave firms an avenue for obtaining redress in respect of errors by the regulator. It is perhaps less surprising that the Scheme is not used by the largest firms; "account relationships" within the FSA are readily identifiable for such firms and they may have other routes for resolving difficulties. It is also possible that a number of expressions of dissatisfaction by smaller firms and IFAs may be being handled locally within the FSA and not finding their way into the formal Scheme as they should (Scheme processes require all such matters to be notified to the Company Secretariat). This issue was one considered by the Review of the Scheme (see below Section 3.8.2).

3.4.3 Source of complaints

Table 6 below shows the source of enquiries and complaints received in 2003/04. Nearly 70% were raised directly with the Commissioner. These include a substantial proportion of the mis-directed complaints that should have been sent to financial services firms, FOS or the FOS Independent Assessor. A further 35 cases, or 20% of enquiries and complaints received by the Commissioner, were referrals to the Commissioner of an FSA decision to exclude a complaint from the Scheme or not to investigate it, either in whole or in part. Only 20 complaints referred to the Commissioner by the complainant had been the subject of a Stage 1 investigation by the FSA covering the entirety of the matters complained of.

Table 6 Source of complaints

Source	2003/04 Number	2003/04 %	2002/03 %
Direct to the Complaints Commissioner	123	69	54
FSA Stage 1 investigation completed prior to being passed to the Complaints Commissioner	20	11	11
Referral in whole: Referred to the Complaints Commissioner by the FSA for review of FSA decision not to investigate or to exclude from the Complaints Scheme	28	16	22
FSA Stage 1 and referral in part: FSA Stage 1 investigation of part of the complaint completed, and referred to the Complaints Commissioner for review of FSA decision not to investigate part of the complaint or to exclude part of the complaint from the Scheme.	7	4	6
Other	0	0	6
TOTAL	140	100	100



3.4.4 Subject matter of complaints

As was shown in Table 4 above, out of a total of 178 enquiries and complaints received by the Commissioner during 2003/04 only 85 were, on investigation, found to be complaints against the FSA. Table 7 below analyses these 85 enquiries and complaints and provides a categorisation of their subject matter. A number of them had more than one broad element, hence the table totals to more than 85. Most of the complaints having a number of components have as one component a complaint relating to alleged administrative failings, either on the part of the FSA's Consumer Contact Centre or the Company Secretariat complaints handling team, so that an initial problem is thereby compounded by allegations of subsequent administrative failures. Delays and failure to provide information are the most common administrative problems.

Table 7 Subject matter of complaints against the FSA

Aspect of the FSA enquired or complained about	2003/04 Number	2003/04 %	2002/03 %
Administration	18	16	27
Handling of complaint or operation of the Complaints Scheme	11	10	5
Supervisory function	43	38	40
Authorisation function	8	7	4
Enforcement function	4	3	4
Pensions review or FSAVC review	6	5	6
Equitable Life regulation	7	6	6
Mortgage endowment regulation	3	3	1
Fees for industrial and provident societies	0	0	3
Money laundering regulation	8	7	0
Split cap investments regulation	1	1	2
Other	5	4	2
TOTAL	114	100	100
Total number of enquiries or complaints against the FSA	85		

The table shows that more than a quarter of complaints about the FSA had a significant component relating either in whole or in part to administrative problems or to the FSA's handling of a complaint. Complaints that were about other substantive issues also quite frequently had a more minor administrative component in addition.

Allegations of administrative failures on the part of the FSA made by complainants have included:

- failure to provide information or not answering the right question;
- delays in answering letters or in providing information;
- letters not acknowledged or answered;
- difficulties in communicating with a disabled person;
- persistently mis-addressed mailings;
- serious delay in issuing the printed version of the Handbook; and
- delays in carrying out Stage 1 investigations.

A large proportion of complaints, 38% in 2003/04, include an element relating to an aspect of the FSA's supervisory activities. This proportion is perhaps unsurprising as supervisory activities account for a substantial part of the FSA's work. Examples of allegations raised by complainants in this category (not all of which are within the jurisdiction of the Scheme or are upheld) include:

- the FSA's supervision of Equitable Life, and of the markets for mortgage endowments and split cap investments;
- the FSA's supervision of insurance companies and the use of waivers;
- the impact of money-laundering regulations on consumers and businesses;
- the impact of the FSA's regulation on the market for Professional Indemnity Insurance (PII);
- the impact on policy holders when the FSA fines firms rather than individual officers; and
- lack of clarity in the FSA Handbook and/or allegations of contradictions in the FSA Handbook.

Complaints in the enforcement category have been very few, but allegations made by complainants (again, not all of which are within the jurisdiction of the Scheme or are upheld) have included:

- the actions and behaviour of an enforcement team during a visit;
- policyholder inability to access funds while assets were frozen as a result of enforcement action; and
- inability to pursue a case with an Employment Tribunal because a firm went into liquidation associated with enforcement action.

There have, similarly, been only a small number of complaints regarding authorisation matters but allegations made by complainants have included:

- undue pressure placed on a sponsor to withdraw sponsorship, making it impossible for an individual's case to be put to the Regulatory Decisions Committee; and
- double-charging of a firm.

Experience this year indicates that money laundering regulations and their implementation by financial services firms is a growing concern with consumers. Particular issues arose, for example, in connection with an individual who is a contractor to the police and has arrangements in place to protect his home address. Other difficulties seem to arise for consumers living at addresses in

multiple occupation where they are not the person paying the utility bills. Money laundering complaints are, generally, not an issue that can be considered under the Scheme, because they relate to FSA policy and rules, or implementation of the rules by a financial services firm.

In contrast with 2002/3, no new complaints were received about fees imposed as a result of the transfer of responsibilities from the Registrar of Friendly Societies to the FSA.

A small number of complaints relating to Equitable Life continued to be received in 2003/04. The matter of Equitable Life-related complaints is discussed further below; see Section 3.7.

Complaints in the "other" category included:

- complaints concerning the application of the FSA's policy of only accepting payment by a debit or credit card; and
- an allegation concerning release of confidential information.

3.5 Stage 2 Investigations

3.5.1 Stage 2 Investigations concluded during 2003/04

Ten Stage 2 investigations were completed by the Commissioner during 2003/04; two of these, by agreement with the complainants, were covered in a single Final Report as their subject matter overlapped substantially. In addition, two complainants agreed to have their complaints, which were about the same issue, investigated and reported upon as a single matter. The Introduction and Summary of eight of the nine Final Reports were published on the Commissioner's website www.fsc.gov.uk, together with the FSA's response. Details of the FSA's responses to reports issued by the Commissioner during the year can also be found on the FSA's website at www.fsa.gov.uk/complaints. The subject matter of the complaints and the Commissioner's findings and recommendations are summarised in Appendix B. One Final Report was not published, at the request of the complainants.

The Commissioner has not upheld any complaints of a very serious nature, such as gross misconduct.

Each case had its own special features but the following findings by the Commissioner were common to more than one of the reports.

- Delays on the part of the FSA in answering letters or failure to acknowledge, review or answer letters were an issue in the majority of cases. These problems manifested themselves across the FSA.
- A failure to comply with the service standards and procedures of the Complaints Scheme was an issue in many of the cases. Failures included the time taken to acknowledge or reply to letters or to carry out the Stage 1 investigation; inadequacies of the Stage 1 investigation in respect of thoroughness and impartiality and the lack of a documented trail of decisions and findings; and inappropriate choice of Stage 1 investigators.
- Problems arose in connection with FSA investigations in respect of the FSA's dealings with customers or employees of the firm under investigation, whether directly affected or providing information.
- There were problems with the inclusion in the FSA's letters of potentially misleading statements or incorrect information, and with letters or other responses addressing questions or allegations different from those posed by the correspondent, including mistaken assumptions that an earlier issue was being referred to.

There are also some common themes to the Commissioner's recommendations. In all cases where she found that the FSA had made a mistake, or not followed their own procedures or met their own service standards, she recommended that the FSA should apologise to the complainant where they had not already done so. In a number of cases she recommended changes to procedures. In some instances, the FSA had already adopted a change of approach subsequent to the events complained of.

Other recommendations were made in the following areas.

- An **ex gratia payment** of £5,000 should be made to one complainant. The FSA made this payment.
- **'Customer management'**: the Commissioner found shortcomings in a number of cases in the way that the FSA dealt with consumers. She noted that the introduction of the Pensions Resolution project provided an opportunity to improve communications with customers whose pensions or FSAVC reviews are outstanding, and to achieve a better balance between the interests of firms and consumers. She urged the FSA to take forward, as a priority, proposals for improved customer management systems.
- **Liaison between the FSA and members of the public**: the Commissioner urged the FSA to review procedures to ensure that suitably trained staff are allocated to deal with liaison between the FSA and members of the public who think they have information relevant to an FSA investigation and that procedures are in place for the prompt reply and follow up to correspondence. This has not been implemented, however; the FSA have argued that appropriate procedures were already in place and a review would not be an appropriate use of FSA resources.
- **Recording of Stage 1 investigations**: the Commissioner recommended that a documented trail of evidence and findings of Stage 1 investigations should be kept in all cases. The FSA have responded to this in their Review of the Complaints Scheme. Guidance to Stage 1 investigators will be finalised when amendments to the Complaints Scheme are introduced in 2004/05.
- **Choice of Stage 1 investigator**: the Commissioner recommended that all Stage 1 investigations should be conducted by a senior member of staff who has not been involved in the matter complained of and who will be accepted by the complainant as someone who will not show bias or favour in their conduct of the investigation. The Commissioner is of the view that close reporting relationships between staff whose actions have been complained of and an investigator threaten the perception of impartiality and objectivity. The FSA agreed, but wish to retain discretion to invite Directors and Heads of Department in some instances to carry out Stage 1 investigations into allegations affecting their Departments in the interests of efficiency.
- **Issuing of important and sensitive correspondence**: the Commissioner recommended that the FSA should take steps to ensure despatch and receipt of important and sensitive correspondence, and/or issue at least one reminder for correspondence that requires an urgent reply. The FSA did not agree. In their view, the cost of using, for example, recorded delivery services would outweigh the benefits.
- **Company Secretariat**: Aspects of procedures in Company Secretariat have been looked at several times during the year, both in response to the Commissioner's findings on specific complaints, and also as part of the Company Secretariat's contribution to the Review of the Complaints Scheme. Changes to organisation and resourcing have been introduced and additional training provided. Further changes may follow when amendments to the Scheme are brought in during 2004/05.

The Commissioner considers that the FSA's responses to her recommendations have been broadly positive. The FSA have accepted the large majority of the Commissioner's findings and recommendations. In a few cases the final response was considerably more positive than comments received initially in response to Preliminary Reports. The FSA's responses to the Commissioner's Reports are summarised in Appendix B to this report, and can be found in full on both the Commissioner's and the FSA's websites.

3.5.2 Stage 2 investigations in progress

Table 3 above shows that the number of formal Stage 2 investigations in progress at the end of the year had reached 26, compared to only 14 at the end of the previous year. An age distribution of the 26 investigations in progress is shown in Table 8.

Table 8 Age distribution of Stage 2 investigations

Elapsed time in weeks	Number of Stage 2 investigations	
	2003/04	2002/03
0-9	14	5
10-19	3	6
20-29	7	1
30-39	1	1
40-49	0	1
50+	1	0
Total Stage 2 investigations in progress at 31 March	26	14

Of the 14 investigations in progress for nine weeks or less, six commenced only during the last month of the year and five of these arose solely because of unacceptable delays on the part of the FSA in completing Stage 1 investigations. These are a matter of particular concern to the Commissioner as, in addition to the implications of delay for the complainant, there is the substantial additional cost of undertaking a Stage 2 investigation that might otherwise have been avoided. The origins of this particular problem appear to lie in resourcing and management issues within the Company Secretariat, exacerbated in some cases by the time taken by other parts of the FSA to assist the Company Secretariat in its investigations. The Commissioner notes that delays in processing Stage 1 investigations are not shown contemporaneously in the FSA's management information on complaints. Compliance with service standards is reported only when a complaint file is closed, hence an increasing problem with delays will not manifest itself in the statistics for some while.

At the other end of the age distribution, Table 8 shows that two investigations have been in progress for more than 30 weeks and one of these for more than 50 weeks.

The first of these two cases was originally put on hold in 2001 while the FSA attempted to resolve the substantive issue, which concerns the ability of an IFA to resign. The resignation was put into effect in

July 2002 but the complainant remained dissatisfied and asked for an investigation. There was a further delay while the FSA considered whether or not they wished to carry out a Stage 1 investigation, and consulted a commissioner who had been involved in aspects of the matter under the previous complaints arrangements. The Commissioner decided that in view of the length of time taken by the FSA that she would go ahead with her Stage 2 investigation and the complainant agreed to the Commissioner's detailed proposal in July 2003. The FSA case handler then left the complaints team and the workplan was not considered by the FSA for 3 months. Of the two interviews requested at that point, one was finally carried out in March 2004; the other has yet to take place.

The second case has presented particular problems with regard to key information. The case is complex, and both the FSA and the complainant have spent very considerable amounts of time searching for information going back some way that was of particular importance in the context of the matters raised by the case. A Preliminary Report has now been issued, however, and the case will thus be concluded in the early part of 2004/5.

More generally, there are many different reasons that contribute to the length of time taken to complete Stage 2 investigations. The complexity of the case is, of course a key factor, influencing the scale of the fact-finding and analysis involved, but the aim must be to complete all investigations as rapidly as possible and the Commissioner would like to see an improvement in this regard.

In some cases during 2003/4 delays have resulted from pressure of work in the Commissioner's Office. In some cases, however, delays have also been introduced by the complainant being slow to respond to the Commissioner's enquiries and/or difficulties arising in finding a mutually convenient date for a meeting between the Commissioner and the complainant. As complainants are frequently private individuals working without support the Commissioner does not aim to put undue pressure on complainants to respond speedily.

In a number of other instances, however, delays have resulted from the FSA taking a considerable amount of time to provide documents and files to the Commissioner and/or taking weeks or even months to arrange interviews with FSA staff. Pressure of work in the FSA's Company Secretariat has undoubtedly been a factor here; the Secretariat has experienced an extended period of absence through sickness during the year, together with some staff turnover, and has not been able to increase resources in line with workload. In the final quarter of the year, the FSA took steps to intensify monitoring and supervision of response times to requests for files and interviews and there has been a commensurate improvement.

Of more concern to the Commissioner during 2003/4 have been delays introduced as a result of challenges raised by the FSA to the scope of certain Stage 2 investigations. The Commissioner sets out the scope of all her Stage 2 investigations in a workplan she provides to the FSA and she is always prepared to provide a full explanation and detailed reasoning for arriving at her decisions on jurisdiction and scope. It should be stressed, however, that the final decision on whether or not a complaint falls within the scope of the Scheme rests with the Commissioner (under provision 1.5.9 of the Complaints Against the FSA (COAF) section of the FSA Handbook). Attempting to challenge these decisions, and delaying investigations whilst attempting to do so, is not appropriate and is time-consuming and costly. The Commissioner has observed that some of the concerns that have arisen seem to result from an incomplete understanding in parts of the FSA as to the nature of the allegations being made by the complainant; in particular, there can be confusion between complaints about the FSA's rules (which would not fall within the scope of the Scheme) and complaints alleging misconduct in the application of the rules in particular cases (which may fall within the scope of the Scheme). There also appears to be a misconception in some parts of the

FSA that a decision by the Commissioner that a complaint falls within the scope of the Scheme and should be investigated is tantamount to a decision to uphold the complaint. This, of course, is not the case. There is and should be no presumption as to the outcome of any investigation until it has been concluded and reported upon.

3.6 Complaints referred to the Commissioner by the FSA

As noted above, certain complaints about the FSA are excluded from the Scheme. Reasons for excluding a complaint from the Scheme are all specified in the FSA Handbook. One such exclusion relates to complaints concerned with the FSA's performance of its legislative functions under FSMA, including making rules and issuing codes and general guidance. The Handbook also specifies that the FSA may not investigate a complaint under the Scheme where it reasonably considers that it could have been more appropriately dealt with in another way (for example, by referring the matter to the Tribunal), or where it reasonably considers that the complaint "amounts to no more than dissatisfaction with the FSA's general policies or with the exercise of discretion where no unreasonable, unprofessional or other misconduct is alleged".

When the FSA decides to exclude a complaint from the Scheme, or not to investigate it, it must inform the Commissioner, who must then decide whether the matter falls within the scope of the Scheme and should be investigated by her. If the Commissioner disagrees with the FSA's decision, and decides that the complaint does fall within the scope of the Scheme, she will write to the complainant to ask whether the complainant wishes the Commissioner to undertake a Stage 2 investigation. In many cases referred in this way quite extensive investigation is needed in order to establish whether or not the complaint in question falls within the scope of the Scheme. Such cases may require a full review of the FSA's files and of information provided by the complainant in order for the Commissioner to reach a decision.

During the year, the Commissioner received somewhat fewer referrals from the FSA of this type than she did in 2002/3. As shown in Table 9 below, there were 35 referrals in 2003/04 compared to 40 the previous year. The figure appears to have stabilised after an unexpected rise in the second half of 2002/03. Only five referrals were still under consideration at the end of 2003/04 and one of these was on hold pending completion of legal action.

Table 9 Referrals of complaints excluded from the Scheme or not investigated

	2003/04					2002/03
	Total	Q4	Q3	Q2	Q1	
Referral in whole	28	7	7	8	6	31
Referral in part	7	2	0	0	5	9
TOTAL	35	9	7	8	11	40

The most significant difference this year from 2002/3 is that the Commissioner has disagreed with the FSA's decision in far fewer cases. Only two referrals made during 2003/04 had by the end of the year resulted in the Commissioner disagreeing with the FSA and deciding to undertake her own Stage 2 investigation. In the second half of the previous year alone she examined eleven

cases where she disagreed with the FSA's decision. In a small number of cases this year, she found that the FSA might more correctly have used a different Handbook provision as the grounds for excluding or not investigating but that the decision was nonetheless justified and no further action was required. Discussions between the FSA and the Commissioner at the end of 2002/03 therefore appear to have been successful in improving understanding of the complex provisions of the Scheme governing exclusions and matters that do not have to be investigated.

3.7 Equitable Life Complaints

At the start of the year the Commissioner had a number of Equitable Life-related complaints held over from previous periods and a small number of complaints relating to Equitable Life continued to be received by the Commissioner during the earlier part of this year. The Complaints Commissioner's role in relation to Equitable Life is defined under the terms of the Complaints Scheme. She can only consider complaints about the actions or inactions of the FSA (or predecessor bodies); not of Equitable Life itself. Further, she may not consider complaints relating to the prudential regulation of Equitable Life prior to N2 because prior to N2 prudential regulation was, first, the responsibility of the Department of Trade and Industry and, second, HM Treasury. Such complaints are the province of the Parliamentary Commissioner for Administration. In the case of complaints that may involve the FSA, the Commissioner has thus far adopted a two-part approach. Cases that focus only on matters of procedure or administration and which do not raise wider issues have been dealt with in the normal way. In the case of other complaints that may fall within her jurisdiction the Commissioner earlier took the view that it was in the interests of the complainant to defer both a final decision on jurisdiction and the undertaking of any Stage 2 investigation until after the reports of the Parliamentary Commissioner for Administration and of Lord Penrose were published. She has continued with this policy this year.

The Report of the Parliamentary Commissioner for Administration into the prudential regulation of Equitable Life was published on 30 June 2003, and the Report of the Equitable Life Inquiry by Lord Penrose was published on 8 March 2004. In advance of the publication of Lord Penrose's report, the Commissioner made contingency arrangements in case a large number of new complaints might be received following publication. In the event, however, only one new complaint was received. Amendments were made to the Commissioner's website to provide information to assist potential complainants in considering where to direct their complaints according to the subject matter of their complaint. Guidance was also available on the FSA's website.

The Commissioner's approach to Equitable Life-related complaints was not affected by the Report of the Parliamentary Commissioner for Administration, although at the time this Annual Report was finalised it was not clear whether the Parliamentary Commissioner may re-open her investigation. Following the publication of Lord Penrose's report, however, the Commissioner has decided to review all the deferred Equitable Life cases to see whether or not they fall within her jurisdiction and should be investigated by her. This review was launched following publication of the Penrose Report and will be completed as soon as possible.

3.8 Review of the Complaints Scheme

3.8.1 The Review process

In her last Annual Report the Commissioner noted that it would be timely to review the FSA's complaints handling arrangements during 2003/04. The Scheme would by then have been in

operation for two years and this timing would also, if necessary, enable any conclusions to be fed through to the review of the FSA and FSMA which HM Treasury intended to carry out.

At the beginning of this year the Commissioner prepared a paper setting out her views on the current operation of the complaints handling arrangements and the issues arising, both from her point of view and from that of the FSA, and outlining possible areas for change.

The FSA Board then commissioned a Review that was carried out by the FSA's Head of Accountability and Public Affairs. A meeting was held between him and the Commissioner in the early summer and the Commissioner contributed some notes for discussion at this stage. The Commissioner was also given an opportunity to comment on a draft of the Review Report, which was presented to the FSA Board in January 2004. The FSA Consultation Paper 04/6 "Changing the FSA's Complaints Scheme" was published on 30 March 2004. The Commissioner will be making a formal response to the Consultation Paper in due course.

3.8.2 What needs to be changed?

The Commissioner and the FSA have a common view of many of the changes that are required to the complaints handling arrangements. In the Commissioner's view the main problems arising under the current Scheme arrangements arise from the essentially "one size fits all" approach that requires all complaints to be treated in the same way and to the same standards; it does not permit variations depending upon the seriousness of the matters complained of. Not only does this mean that resource is not being applied proportionately to need; there is also the potential that perfectly sensible and pragmatic approaches that may be adopted by the FSA to dealing with some "complaints" actually represent a technical breach of the Scheme. Additionally, there are problems with the interpretation in practice of some of the provisions of COAF.

The Commissioner was also concerned that there was no comprehensive oversight being exercised over complaints taken as a whole. The Commissioner prepares a quarterly report on her activities but this was not looked at by the FSA together with reports on the internal (FSA) work in investigating complaints. There was thus no comprehensive picture put together of patterns and trends in complaints. This must, in the Commissioner's view, have limited the ability of the FSA to pursue a culture of continuous improvement.

The Review Report made recommendations in these areas. It proposed that the broad definition of a complaint should be retained, but a graduated proportionate approach to complaints of varying degrees of seriousness should be developed. In addition, there should be some changes to the way that the FSA deals with complaints internally, including improvements to the oversight of the overall operation of the Scheme.

The Commissioner broadly supports the direction of these recommendations. Benefits to the efficiency and quality of FSA investigations have been identified and the Commissioner is of the view that the changes, if carefully implemented, will also reduce the amount of time she takes to review FSA decisions and to carry out her Stage 2 investigations. She will be commenting in more detail on this, and on any issues in the Consultation Paper about which she has concerns in her formal response.

4 Operations, Resource Management, Communications and Performance

4.1 Operations and resource management

4.1.1 The Operating Model

At the start of the Scheme, it was extremely difficult to predict what the volume of enquiries and complaints might be. Experience under previous arrangements was not necessarily going to be a good guide as the role of the FSA and the Complaints Scheme itself were significantly different. More than two years later it continues to be difficult to predict the level of resources required. Although volumes have stabilised in the range of 45-50 new complaints and enquiries being received each quarter, the composition of the caseload is extremely varied. Cases differ enormously as to complexity and the amount of documentation associated with each one.

In recognition of the variability of the workload, the Office of the Commissioner is operated on the basis of a small core team, supported by additional resources on an 'as-needed' basis. The core team comprises the Commissioner herself, her Personal Assistant, an Administrator, and two staff who support her in project management, operational functions and on policy issues as well as undertaking some investigations. The Commissioner is part-time and all those working in the Office also provide their services part-time. Additional resources to support investigations are obtained from two sources. The Commissioner has a small panel of experienced investigators who are self-employed and who will assist with particular investigations from time to time. This panel of investigators has been increased in number and been used more intensively during the year to reflect the growing workload of Stage 2 investigations. Resource can also be bought in from the Commissioner's professional advisers; this may be necessary when specialist expertise is required and may also be used if there is a need to deploy more resource at short notice.

In keeping with this general approach, office accommodation in Canary Wharf comprises a small serviced office with three workstations; additional meeting rooms are booked only when required. The Commissioner considers it very important that she operates from office accommodation that is separate from that of the FSA. Complainants are understandably concerned that their complaints should be investigated completely independently and, from time to time, need reassurance about the Commissioner's independence from the FSA and the confidentiality of their meetings with her. Such concerns would be difficult to assuage if the Commissioner were to be accommodated at the FSA's address. It would also pose problems given the Commissioner's staff are precluded, under the terms of the Scheme, from being FSA employees. A location in close proximity to the FSA is, however, both convenient and efficient for attending meetings and interviews with FSA staff and for exchanging files.

4.1.2 The Complaints Commissioner's Budget

As it is impossible to foresee accurately the volume and complexity of the enquiries and complaints that might be received during the year, the Commissioner agreed, as in past years, a budget for 2003/4 with the FSA that assumed a 'base' caseload of routine enquiries and complaints. The cost of large and/or complex investigations arising during the year were not provided for in this 'base'

budget but were treated as additional specific projects as they arose during the year, with project budgets notified to the FSA in advance.

A similar approach was adopted in budgeting for professional fees. The Commissioner has a need from time to time for legal advice on specific cases, often on jurisdictional issues but also on a wide variety of other legal matters. An allowance for this, related to the base caseload, was built into the budget. More substantial pieces of advice, such as that required during the year in relation, for example, to the Data Protection Act and Subject Access Requests, on disability legislation, and on the structure and legal status of the Office and related tax implications, were treated as additional special projects, the costs of which were not provided for in the 'base' budget. Such projects were separately identified as they arose during the year and the FSA informed of the estimated cost of each project. An exception to this in 2003/4 was legal advice on Equitable-related issues; the Commissioner was able to anticipate at the start of the year that she would require legal advice relating to the Report on Lord Penrose's Inquiry into Equitable Life as soon as it was published and an amount for this was included in the 'base' budget.

4.1.3 Expenditure 2003/04

A breakdown of the cost of the Commissioner's operations in 2003/04 is given in Table 10 below. Notes on each line of the Table are set out below. These explain, for lines 1 to 6, any variances. The figures reported have been reconciled with figures held by the FSA. Figures may not sum to totals or variances due to rounding.

Table 10 Complaints Commissioner's Expenditure: Out-turn⁷ for 2003/04

Description	See Note	'Base' Budget 2002/03 £000s	Out-turn 2003/04 £000s	Variance £000s
Commissioner's fees and staffing costs	1	289	347	59
Legal fees: general	2	71	94	23
Legal fees: Equitable Life	3	35	36	0
PR fees	4	42	41	(1)
Office accommodation and insurance	5	68	65	(3)
Contingency	6	10	0	(10)
TOTAL BASE BUDGETED COSTS	7	515	583	67
Items in addition to base budget:				
Additional fees: investigations	8		132	
Additional legal fees: advice on DPA and disability rights	9		11	
Additional fees: staff resource	10		75	
Additional fees: special project	11		58	
Total additional fees			276	
TOTAL EXPENDITURE	12		859	

⁷ Every effort was made to include all expenditure for the twelve months ended 31 March 2004 but it has been necessary in two instances to use estimates as invoices had not been received by the year-end cut-off date. Accruals have been made for these estimates so that these amounts are included within the year's actuals.

Notes on Table 10

- 1 The Complaints Commissioner's own fees were as budgeted.
Administration costs in total were about £5,000 less than budgeted. A budgeted increase of one third in the amount for the Commissioner's PA to allow for increased time input was not utilised. There was an additional amount spent at the beginning of the year for administration concerned with the transfer of historical data to the new tracking database, and although the new administrator worked a few more hours part-time than was anticipated this was more than compensated for by the lower rate.

There was an increase in the number of staff at the Office of the Complaints Commissioner in order to handle the increased number of complaints. An additional person to support planning and conducting investigations was brought in part-time from May 2003, giving the Office one full-time equivalent (FTE) in this role, but in the second half of the year the volume of work necessitated expanding this to one and a half FTE. This accounts for a variance against budget of about £33,000. The higher than anticipated number of Stage 2 investigations also meant greater use of part-time case investigators, accounting for a variance of about £30,000.

No costs were incurred for National Insurance and other employment costs, although professional advice has now been commissioned on this issue and on the possible requirement to adopt different practices in relation to VAT in the future.
- 2 Legal fees have been incurred for on-going advice on jurisdiction and on drafting of correspondence. Costs have been higher than expected due to a number of issues of scope raised by the FSA in challenges on particular cases. The Commissioner has needed to take legal advice in a number of these cases. One case in particular raised complex jurisdictional issues not previously addressed by the FSA because they had excluded the case from the Scheme on other grounds. The variance was about £23,000 of which about £20,000 was accounted for by four cases. There are also costs for legal support that are additional to the 2003/04 budget; these extra costs are shown under separate lines in Table 1 (See Notes 8 & 9).
- 3 An amount was budgeted for advice and support to the Commissioner in relation to Equitable Life cases. This figure includes the costs of a special review of the Report of the Penrose Inquiry published on 8 March 2004. The amount incurred was almost exactly as budgeted.
- 4 The budget for PR fees covers the provision of advice on media matters and information on parliamentary and public affairs relevant to the Commissioner's role. Actual expenditure in this category was below budget. However, actual costs for artwork, printing and distribution costs for the Commissioner's Annual Report for 2002/03 have also been included under this heading. These amounted to about £5,000 and were not included in the budget as the FSA had previously performed these tasks without recharge. (The Commissioner's Annual Report is distributed separately from that of the FSA, which is the same approach as is adopted by the Consumer and Practitioner Panels.)
- 5 Accommodation costs have been maintained within the base budget following a renegotiation with the office services supplier. The cost of services provided directly by the FSA, such as IT support and some office supplies, are not charged to the Commissioner's budget.
- 6 The base budget included a general contingency allowance for unforeseeable additional operating costs that occur due to the nature of the Commissioner's role. Actual costs are not shown against this contingency but have been allocated against the appropriate category line.
- 7 The Total line allows comparison between the agreed base budget and actual expenditure against the same items. Total budgeted costs were about £67,000 over the base budget, accounted for primarily by higher than anticipated staff expenditure and legal advice related to the base caseload.
- 8 Additional investigation costs for specific cases have also been incurred. These relate to investigatory work and expert independent advice necessary to complete certain large and/or complex Stage 2 investigations. As agreed, the FSA has been advised in advance of the estimated costs of each of these cases. The Commissioner has incurred costs on six such cases in the year. Final Reports have been published on three of the cases.
- 9 There were unforeseen costs associated with a Data Protection Subject Access request made to the Commissioner in the first half of the financial year. This was the first time the Commissioner had to respond to such a request and legal costs were necessary to ensure compliance and for advice on procedures. Similarly, one particular case raised issues regarding the Disability Rights Act and again specific legal advice was required in order to understand the wider implications of this Act on organisations that deal with the public.
- 10 The Commissioner agreed with her legal advisers to use the services of a qualified lawyer part-time for a period of weeks in the first and second quarters of the year for two main purposes: partly in order to make progress with some of the more complex cases in the workload which had built up in the first quarter, and partly to support the Commissioner's input to the review of complaints handling arrangements. The costs are shown in full in this line. Approximately one third of the costs related to policy work.
- 11 With the agreement of the FSA, the Commissioner commissioned advice on the structure and legal status of her Office, and associated employment, VAT and other tax issues. The report and recommendations have been shared with the FSA.
- 12 This line shows the full costs, budgeted and unbudgeted, of the Complaints Commissioners' Office for the year.

4.1.4 Monitoring operational performance

During the year the Commissioner brought into operation a new database in which to log case actions and complainant information. This system has been very successful in improving efficiency, and administration costs have been reduced even when allowance is made for the one-off cost of transferring existing records into the new system. It provides improved management information and a more sophisticated presentation of information. It has also been essential in order to capture and share information across a larger team of case handlers. Further enhancements are planned for 2004/05.

To date, the Commissioner has operated to a limited number of service standards. Correspondence from complainants is in all cases acknowledged by the end of the following business day, and

straightforward enquiries or mis-directed complaints are dealt with in the same timeframe. When starting a Stage 2 investigation the Commissioner draws up a timetable which is communicated to both the FSA and to the complainant. If in the event it proves necessary to change the timetable, the Commissioner informs all the parties concerned.

In the Commissioner's view it is not possible to set realistic targets for the overall elapsed time taken to investigate complaints. This is because of very significant variations in the scale and complexity of the matters complained of but also because elapsed time is highly reliant on factors beyond the Commissioner's control, including the time taken by the FSA to respond to requests for information and interviews, which can be highly variable. The Commissioner records all actions taken in relation to complaints, however, and is able to measure and monitor time taken to carry out any particular step in the process.

At present, the Commissioner does not compute the exact cost of handling each enquiry or complaint as this would involve the use of detailed timesheet systems not only by her staff but also by the FSA, which does not itself propose to deploy such systems in relation to complaints handling. In the Commissioner's view, however, it may be possible to set targets for certain stages of the investigation process and she is now monitoring the cost of Stage 2 investigations.

Estimated costs of Stage 2 investigations completed during 2003/04 are shown below in Table 11. These include the total costs of carrying out the investigations and producing the reports, including an allowance for the Commissioner's own time. The table shows the distribution of these costs, which include, where relevant, costs incurred in both 2002/03 and 2003/04.

Table 11 Frequency distribution of cost of Stage 2 investigations and reports concluded during 2003/04

Total costs of Stage 2 investigations	Number of investigations
£0-9,999	5
£10,000-19,999	1
£20,000-29,999	0
£30,000-39,999	0
£40,000-49,999	1
£50,000-59,999	2

4.2 Communications

4.2.1 Reporting and communications

As noted above, the Commissioner is required to produce reports on her Stage 2 investigations. In 2003/04 there have been nine such Final Reports produced; the Introduction and Summary of eight of these were published on the Commissioner's website.

Additionally, the Commissioner prepares a Quarterly Report for the FSA Board on her activities and findings and these reports were also published on the Commissioner's website.

The Commissioner attended FSA Board meetings during the year to present her quarterly report and answer questions, and in the second quarter met a group of FSA non-executive directors (NEDCO) to discuss matters relating to the operation of the Complaints Scheme and the proposed Review of the Scheme.

The Commissioner holds monthly progress meetings with staff of the FSA Company Secretariat, which has responsibility within the FSA for the operations of the Complaints Scheme. A quarterly policy meeting is also held with the FSA Company Secretary.

The Commissioner has also attended meetings of the Practitioner Panel, the Small Business Practitioner Panel and the Consumer Panel during the year, to discuss her work and also some of the issues raised by the Review of the Scheme. She has also met with representatives of trade associations and the specialist written and broadcast media in order to explain the Scheme and how it works.

The Commissioner gave evidence in person to the Treasury Committee of the House of Commons on 28 October 2003. The Committee's questions and the Commissioner's evidence attracted some press coverage but few additional complaints. The Committee was particularly interested to hear the Commissioner's views on the FSA's handling of consumer issues and on the potential for confusion arising from the plethora of complaints arrangements in operation in the financial services industry as a whole.

In addition, the Commissioner provided written evidence to the House of Lords Select Committee on the Constitution which was undertaking an inquiry into the accountability of regulators with a special focus on the regulation of financial services. Their report entitled "The Regulatory State: Ensuring its Accountability" and the written evidence was published in May 2004.

4.2.2 Liaison with the FSA

The Complaints Commissioner is and must be fully independent of the FSA. It is however helpful from the viewpoint of complainants for the staff of the Complaints Commissioner's Office and those in the FSA responsible for administering the complaints scheme to liaise regularly about complaints.

In addition to the regular monthly meetings with the Company Secretariat, briefing meetings on developments within the FSA can be very helpful. This year the Commissioner and her staff were provided with briefings on topics such as changes to the Handbook and its distribution media, developments in consumer services, the Business Improvement Programme, the new FSA organisation structure and the arrangements for authorising and regulating High Street Firms which provide advice on mortgages and general insurance. The Commissioner would like to thank the FSA staff who took the time to organise and deliver these briefings. The Commissioner was also pleased to make a presentation to a meeting of Enforcement staff and answer their questions.

The FSA's non-executive directors raised with the Commissioner early in the year the issue of assessing the impact of her recommendations. The Commissioner suggested, and the FSA have agreed, that FSA Internal Audit (Business Review and Audit from April 2004) should take on responsibility for monitoring implementation of the Commissioner's recommendations made in her Stage 2 reports which are accepted by the FSA.

During 2003/04 the FSA Company Secretariat undertook a major internal awareness campaign to promote understanding of the Complaints Scheme and to address the issues of how to identify a complaint and how a complaint should be handled. The Commissioner welcomed this helpful initiative. The Office of the Complaints Commissioner is dependent on the FSA providing information

and making its staff available for interview in support of investigations. This can seem an onerous task for FSA staff, who have to prioritise the Commissioner's requirements in addition to their existing responsibilities. Company Secretariat staff have to balance the competing demands of their own service standards with the demands of the Commissioner to make arrangements for her Stage 2 investigations. Generally, the Commissioner's many requests through the year have received a positive and professional response from FSA staff. However, it continues to be important for all parts of the FSA to recognise the importance of the Complaints Scheme and the role of the Commissioner as determined by Parliament, and the need to respond to requests on a timely basis.

There are time standards set in the protocol between the Commissioner and the FSA for the length of time taken by the FSA to provide files and meet interview requests. Files and documents should be provided within five working days and interviews should be held within ten working days unless staff cannot reasonably attend within that time. For most of 2003/04 the FSA did not meet these standards and there were delays, prolonged in some cases, in obtaining files and making staff available for interview. Towards the end of the year, the FSA Company Secretariat took steps to improve the situation by intensifying monitoring and supervision.

The Commissioner has also been concerned this year by a number of challenges from the FSA to the scope of Stage 2 investigations. The Commissioner sets out the scope of all her Stage 2 investigations in a workplan she provides to the FSA and is always prepared to provide a full explanation and detailed reasoning for arriving at her decisions on jurisdiction and scope. However, under the terms of the Scheme the final decision on whether or not a complaint falls within the scope of the Scheme rests with the Commissioner. Unnecessary challenges to these decisions, with consequent delays to investigations, are time-consuming and costly both for the FSA and the Commissioner.

Another factor affecting the Commissioner's workload is the quality of documentation submitted to her. This includes Stage 1 documentation in particular, but also documentation in support of FSA decisions not to investigate a matter, and other policy documentation. During 2003/04 the Commissioner has received a number of incomplete and inadequate files and sets of documents where a great deal of work has been required to make a considered response. Files on certain Stage 1 investigations, for example, have proved to be inadequate, particularly in instances where the investigation was led from another department. Files rarely contain documentation explaining the FSA's reasoning for a decision or a course of action, or a chronology of events, and there may be gaps in the information provided. This adds considerably to the time taken to put together a comprehensive account of the facts. In the Commissioner's view, the FSA would benefit from a more systematic approach to recording and documenting, and from more use of standard forms and checklists to ensure full and proper coverage of the issues in Stage 1 investigations.

4.3 Performance against objectives

In her first Annual Report, the Commissioner set out five objectives against which her performance could be measured. These were as follows.

1. the statutory responsibility of the Complaints Commissioner to ensure that independence is maintained and that complaints are investigated without favouring the FSA (the FSA for its part is obliged to provide the Complaints Commissioner with the resources required to discharge her responsibilities);
2. the need for potential complainants to be aware of the Complaints Scheme and how it works and to be able easily to access it when they need it;

3. the need for complaints to be dealt with quickly and fairly, and for like cases to be treated alike;
4. the need for highly cost-effective use of resources to support a complaints scheme, the ultimate cost of which is borne by the financial services industry; and
5. the need to assist the FSA as well as complainants to reap the benefits of the Complaints Scheme, by helping them to ensure that mistakes, once identified, are rectified and processes and procedures improved in the light of experience.

Below are the Commissioner's comments on performance against each objective in 2003/4.

Objective 1: Achieved, but needs to be protected for the future

The Commissioner continues to be satisfied that this objective is fully met at present. In relation to matters such as the location of the Commissioner's office accommodation and the provision of resources to the Commissioner, however, independence from the FSA will need to be maintained and to be seen to be maintained. The Commissioner will have these issues in mind in responding to the FSA's proposals for changes to the Scheme.

Objective 2: Some progress, but more to do

As described elsewhere in this report, the Commissioner has undertaken a number of activities to promote understanding of the Scheme, both to potential complainants, and to politicians, key officials and specialist written and broadcast media with an interest in financial regulation. Nevertheless, the various arrangements within the financial services industry are inherently complex and there is a continuing need to explain and promote the Scheme to those who may need to access it.

Objective 3: Achieved in part, but continuing problems with delays

The Commissioner is satisfied that all complainants are treated fairly. All correspondence is very carefully considered and reviews are thorough. Stage 2 complainants are all offered the opportunity of a face-to-face or telephone meeting with the Commissioner in the course of the investigation. The Scheme provides for both the FSA and the complainant to comment on the Commissioner's report before it is finalised. Achieving consistency so that like complaints are treated alike is not a problem, given that the Commissioner herself approves all decisions, workplans and Stage 2 reports in detail. The tracking database has also facilitated consistent treatment of complaints.

On occasion, complaints have not always been dealt with as quickly as the Commissioner would have wished. This point is discussed in more detail below.

Objective 4: Achieved in part, but more to do

The Commissioner is very conscious of the need to be cost-effective. For reasons explained elsewhere in the report, there is still room to improve the speed with which complaints are handled. Some of the delays are outside the Commissioner's direct control, although in working with the FSA she seeks to secure solutions to problems from that source. To some extent, however, there is a trade-off between the cost of the operation and the time taken to undertake reviews, in that pressure of work in the Commissioner's Office can result in delays which could have been avoided if more resource had been applied "on demand". This type of resource is, of course, more expensive. Furthermore, this would not always address the problem, as there is a limit to the volume of work which a part-time Commissioner can herself process at any given time.

As the number of enquiries and complaints received has continued at a high level, but the resulting workload and its complexity remains impossible to predict, the Commissioner continues to hold the view that resources should not be committed ahead of clear evidence that they are needed. The Commissioner intends to continue to make use as far as possible of standardised approaches that can be tailored to individual cases. She will also continue to draw to the attention of the FSA to the ways in which they can present cases to her in a fashion that will minimise her costs.

Objective 5: Progress, but more to do

As noted above, the FSA has accepted the majority of the Commissioner's findings and recommendations made during the year. As was also mentioned above, the Commissioner has this year suggested, and the FSA have agreed, that FSA Internal Audit (Business Review and Audit from April 2004) should take on responsibility for monitoring implementation of accepted recommendations. The Commissioner has also welcomed the internal awareness campaign about the Complaints Scheme organised and undertaken this year by the Company Secretariat. Nevertheless, more can always be done to reap the benefits of the Scheme consistently; it is the achievement of this objective that will ultimately demonstrate value for money from the FSA's complaints arrangements taken as a whole.

5 Issues and Priorities for the Future

5.1 Issues and priorities for the future

The following matters constitute, in the Commissioner's view, the key issues and priorities for 2004/05.

5.1.1 Transition and succession

The Commissioner's term of office ends at the beginning of September 2004. The Commissioner has provided advice to the FSA on the steps which, in her view, need to be taken to ensure a smooth transition to the next Commissioner.

5.1.2 A legal identity for the Office of the Complaints Commissioner

The rapidly approaching time for appointing a successor has thrown into sharp focus the need for the FSA to resolve some important issues relating to the structure and legal status of the Commissioner and her Office.

Both FSMA and the FSA Handbook are silent on the matter of the status and structure of the Commissioner's operations. The current Commissioner has been able to operate without formal structures by obtaining support from staff who are either self-employed or are employed by third parties but this is less than satisfactory in many respects. The absence of a legal 'wrapper' for the Office of the Commissioner is problematic in terms of the need to provide continuity from one Commissioner to another but also in terms of restrictions on the employment status of the Commissioner and her staff, on statutory immunity and on the tax position of the Office and the people who work within it, and on issues relating to intellectual property.

The Commissioner, with the agreement of the FSA, has commissioned professional advice on these issues and on the options available. This advice has been discussed with the FSA. Arrangements are for the FSA to make, but at present it appears that a suitable legal 'wrapper' for the Commissioner's operations that would address the current problems would probably best be provided by establishing a Company Limited by Guarantee.

5.1.3 Implementing changes to the FSA's Complaints Scheme

The Commissioner will be making a formal response to the FSA Consultation Paper CP04/6 "Changing the FSA's Complaints Scheme" in due course. Once the outcome of consultation is known, there will be a great deal not only for the FSA but also the Commissioner to do to take the detailed changes into implementation. The Commissioner will need to review her operating procedures and, where necessary, amend the Protocol between the Commissioner and the FSA. The explanatory booklets for complainants will need to be revised and changes made to information provided on the Commissioner's website.

5.1.4 Managing the workload

It continues to be difficult to predict the likely volume of enquiries and complaints looking ahead. One indicator of possible volumes in the first half of the year is the volume of complaints dealt with by the FSA in the second half of 2003/04 as a proportion of these is likely to progress to the Commissioner. The FSA has continued to experience increases in the number and complexity of complaints received. In 2003/04 the FSA completed 135 Stage 1 investigations, compared to 59 the previous year. Other factors also suggest that volumes in 2004/05 are likely to be at least at the same level as 2003/04:

- the FSA's responsibilities are increasing as they take on regulation of general insurance broking and mortgage advice; this involves the supervision of potentially thousands of additional firms, and many more consumers;
- there are continuing concerns over mortgage endowments;
- disappointing product performance from the point of view of investors tends to increase the number of complaints as consumers look for avenues to recover their losses;
- new topics: in 2003/04 split capital investment trusts arose as a new issue, and the FSA's investigation is still underway; new complaints might originate from this source, or from completely new issues arising during 2004/05; and
- the impact of changes to the complaints arrangements is uncertain.

As far as changes to the complaints arrangements are concerned, the FSA are proposing that the Complaints Scheme should be amended so that complaints which they decide to exclude from the Scheme or not to investigate will be referred to the Commissioner for review only where this is requested by the complainant. At present all such decisions are referred for review. The Commissioner supports this proposal, but it is unclear what impact this change, if implemented, will have on the Commissioner's workload.

More generally, the Commissioner believes that, if carefully implemented, other changes to the way the FSA operate the Complaints Scheme have the potential to enable economies to be made in her own operation. These include, for example, "fast track" arrangements for dealing with straightforward complaints as quickly as possible at local level, and clearer guidance for Stage 1 investigators. The need to balance, as far as possible, the resources applied to the Scheme with the level of demand will, however, continue to be a major challenge both for the FSA and the Commissioner.

5.1.5 The scope of the Scheme

Practical experience with the Scheme has revealed some particular issues that have been highlighted above in this report. These include:

- the number of enquiries and complaints coming direct to the Commissioner that are found to be outside the scope of the Scheme; many of these fall within the remit of FOS and/or the FOS Independent Assessor;
- Stage 2 investigations have increased substantially in number but significant time and effort also continues to be expended on investigating matters to see whether or not they fall within the scope of the Scheme, including matters where the FSA has declined to admit a complaint to the Scheme or to investigate it.

It will therefore continue to be very important, for all those involved in complaints handling, to take every opportunity explain the complaints arrangements to those who may need to access them. There will also be a continuing need to have adequate numbers of staff available across the FSA who understand the Scheme and the quite complex provisions of the Handbook that govern its scope and operations.

5.1.6 The Scheme's users

As explained above in Section 3.4.2, very few of the enquiries and complaints received by the Commissioner are from Independent Financial Advisers, approved individuals, and officers of other organisations. In 2003/04 93% of complainants were individual members of the public, or ex-employees of financial services firms. Whilst it is good to know that members of the public are making use of the Scheme, this pattern of use is in contrast with expectations when the Scheme was designed. The Commissioner is concerned that the Scheme may not be affording industry practitioners the avenue for obtaining redress in respect of errors by the regulator that was intended at the time the Scheme was designed. The Commissioner believes there may be merit in exploring this issue further, in consultation with the industry and, in particular, the Practitioner Panel. Furthermore, if the Scheme continues to be used primarily by consumers, it would be worth considering whether its design and promotion best meet their needs. The Consumer Panel may have views from this perspective.

5.1.7 Working with the FSA

The Commissioner sees the Complaints Scheme as a mechanism through which the FSA can benefit as an organisation. The Scheme's principal function is, of course, to protect individual customers and practitioners and it therefore has a key role to play in the overall accountability arrangements for the FSA. If it is operated in an open and constructive manner, however, the Complaints Scheme can not only fulfil these functions but also benefit the FSA by assisting it to learn and to improve as an organisation. The current Commissioner has looked for opportunities in the way that she carries out her role to enable the FSA to reap these benefits of the Scheme. With a new senior management team in place at the FSA, and a new Commissioner from September 2004, further impetus in this direction in 2004/05 will be timely.

5.2 Conclusion

The FSA's Company Secretariat has the responsibility within the FSA for the administration of the complaints arrangements and provides the FSA's point of liaison with the Commissioner. The Commissioner would like to thank, in particular, the staff of the Company Secretariat for their help and co-operation; she would also like to thank all the other members of staff of the FSA who have given and are giving their time to assist her with her investigations.

Rosemary Radcliffe
Complaints Commissioner

May 2004

Appendix A – How does the Complaints Scheme work?

The Financial Services and Markets Act 2000 (FSMA) requires the FSA to have in place a Complaints Scheme. The detailed provisions of the Scheme are set out in the Complaints Against the FSA (COAF) section of the FSA Handbook. COAF defines the Scheme as “a procedure for enquiring into and, if necessary, addressing allegations of misconduct by the FSA arising from the way in which it has carried out or failed to carry out its functions”.

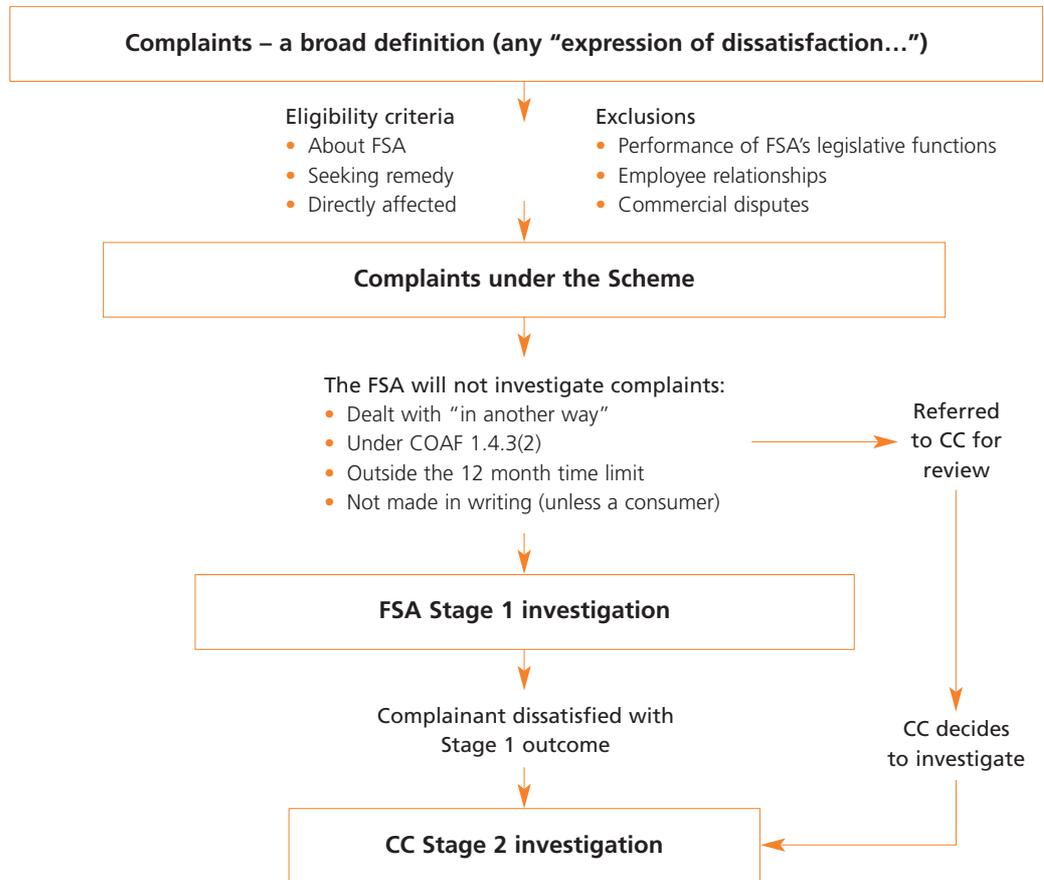
The way in which the Scheme works is shown diagrammatically in Figure 1. The key features (moving from top to bottom of Figure 1) are as follows.

- a) **A broad definition of a complaint.** The starting point is a very broad definition of a complaint. COAF defines a complaint as “any expression of dissatisfaction about the manner in which the FSA has carried out its functions under the Act other than its legislative functions”. Legislative functions are defined in the Act and include making rules and issuing codes and general guidance.
- b) **Exclusions from the Complaints Scheme.** In addition to excluding complaints relating to the FSA’s legislative functions, certain other complaints are excluded from the Scheme; these are complaints about the FSA’s relationship with its employees; and complaints connected with commercial or contractual disputes involving the FSA.
- c) **Eligibility criteria.** As well as complaints specifically excluded from the Scheme, COAF applies some additional eligibility criteria. To be eligible for consideration under the Scheme, the complaint must be about the FSA, not about FOS or the FSCS; the complainant must be seeking a remedy and must have been directly affected by the FSA’s actions or inactions.
- d) **Complaints under the Scheme.** It follows that “any expression of dissatisfaction about the manner in which the FSA has carried out its functions...” is a complaint under the Scheme unless it is specifically excluded under b) above or fails to meet the eligibility criteria specified under c) above.
- e) **Complaints the FSA will not investigate.** Under COAF, however, the FSA may decide not to investigate some complaints under the Scheme. The main categories are, in summary:
 - a complaint “which it reasonably considers could have been, or would be, more appropriately dealt with in another way”; the example given is by the Tribunal;
 - a complaint “which it reasonably considers amounts to no more than dissatisfaction with the FSA’s general policies or with the exercise of discretion where no unreasonable, unprofessional or other misconduct is alleged.”;
 - a complaint not made within 12 months unless there are reasonable grounds for the delay; and
 - a complaint from a person other than a consumer unless it is made in writing.
- f) **Referral of complaints not investigated to the Commissioner.** Where the FSA decides not to investigate a complaint, it must notify the Complaints Commissioner of each complaint which it decides not to investigate and will inform the complainant that it has done so. The Complaints Commissioner then decides whether the complaint falls within the scope of the Complaints Scheme and, if so, whether to conduct an investigation.⁸

⁸ The wording of COAF 1.5.7 is not entirely clear as to whether only complaints that “the FSA will not investigate” should be referred to the Commissioner, or both complaints that “the FSA will not investigate” and those excluded from the Scheme under the COAF criteria. At present, the Company Secretariat refers to the Commissioner all those complaints where they decide that “the FSA will not investigate” together with complaints excluded from the Scheme because they relate to the FSA’s legislative functions.

- g) **Stage 1 Investigation.** Any complaint under the Scheme and which is not a complaint the FSA has declined to investigate must be investigated by the FSA under the arrangements for a Stage 1 investigation.
- h) **Stage 2 Investigations.** Complainants who are dissatisfied with the outcome of a Stage 1 investigation, or who are dissatisfied with the FSA's progress in investigating their complaint, may refer the matter to the Complaints Commissioner, who may decide to carry out her own investigation.

Figure 1: The Current Arrangements



Appendix B – Stage 2 Investigations completed in 2003/04

Nine Final Reports on Stage 2 investigations were completed and issued by the Complaints Commissioner during 2003/04. One of the reports covered, with their agreement, a joint investigation of related complaints by two complainants. In addition, two other complainants agreed to have their complaints, which were about the same issue, investigated and reported upon as a single matter. One of the nine Final Reports was issued to the FSA and complainants, but not published. The Introduction and Summary of the eight other Final Reports were published and can be found on the Commissioner's website www.fsc.gov.uk, together with the FSA's responses. This Appendix provides a summary of the subject matter of the complaints, the Commissioner's findings and recommendations and the FSA's responses. Details of the FSA's responses to reports issued by the Commissioner during the year can be found on the FSA's website at www.fsa.gov.uk/complaints. Summary details are also to be found in the FSA's formal response to the Annual Report, also available on the FSA website.

Complainant A worked for a financial services firm. He voiced concerns about what he believed were irregularities in internal procedures, initially to senior management and later to the FSA. His complaint against the FSA had a number of components, of which three were found to fall within the scope of the Complaints Scheme.

First, he complained that the FSA did not comply with its own standards with regard to the time taken to respond to letters and had not followed its own complaints procedures in handling his complaint. The Commissioner found this element of the complaint made out but acknowledged that in its Stage 1 report to the complainant, the FSA had apologised and offered explanations for the delays.

Second, the complainant complained that the FSA did not reply to some of the questions raised and/or was not definitive in its response. The Commissioner found this element of the complaint to be made out. It was not clear that the complainant's letters had, in all cases, been carefully studied and no response was given where the complainant repeatedly requested information. There was no evidence that the FSA deliberately tried to mislead the complainant, and the FSA had already apologised to the complainant in their Stage 1 report.

Third, the complainant complained that there may have been a breach of confidentiality in that the FSA may have disclosed his name to the financial services firm. This element of the complaint was found not to be made out. No evidence was found that the FSA had breached confidentiality and, in the light of the complainant's detailed correspondence with the firm over a lengthy period of time, it was not improbable that the firm had been able to infer that the complainant had contacted the regulators rather than finding this out from the FSA.

In the light of her findings, the Complaints Commissioner recommended that the FSA should provide a further apology to the complainant for their failure to follow their own procedures in handling his complaint, and in particular their failure to adhere to the published timescales for responses under Stage 1 of the Complaints Scheme. The FSA agreed with these recommendations. The FSA gave assurances that the department concerned in the matter of delays in responding to correspondence was reviewing its working practices to ensure that it dealt with correspondence in a timely and direct manner.

An employee voicing concerns to the FSA about internal irregularities at his place of work

An investigation into the activities of a Registered Person and an SFA Disciplinary Tribunal

Complaint B concerned investigations into the complainant's activities as a Registered Person, and matters surrounding a subsequent SFA Disciplinary Tribunal. The complaint had three principal components. First, the complainant alleged that the SFA exhibited bias in the conduct of its investigations. Specifically, the complainant expressed concern about the delay in concluding a First Investigation into her activities. She was also concerned that the minutes of a meeting of the Individual Registration Panel had been amended and that two versions had been submitted to the Tribunal. The complainant believed that the conduct of an officer who undertook both the First and Second Investigations exhibited bias against her, and that the evidence of a witness at the Tribunal supported her view. The complainant believed that the treatment meted out by the SFA to her "partner", which was less severe than that imposed on her, was further evidence of bias. The complainant also believed that an expression of gratitude contained in a letter to a third party at the time the Board Notice was being drafted supported her allegation. Overall, the Commissioner found no evidence of bias or antipathy on the part of the officer, or of the SFA/FSA more generally, towards the complainant in respect of its investigations into the complainant's activities as a Registered Person. This component of the complaint was therefore not made out.

Secondly, the complainant complained that, following the Tribunal, the FSA claimed and pursued from her an unreasonable amount of costs. Thirdly, the complainant complained that the Board Notice in respect of the outcome of the Tribunal was inappropriate and unreasonable, and that the FSA did not have authority to publish it in the form in which it was published.

Certain matters relevant to the complaint had also been raised before the Tribunal. Under the terms of the Complaints Scheme, the judgement of the Tribunal is binding on the Commissioner in respect of determinations of fact. With regard to the complaint relating to costs, the amount of costs was considered by the Tribunal and the Commissioner was not, therefore, able to question it. The Commissioner did, however, look at the question of whether the FSA should have considered not pursuing the complainant for the costs. The Commissioner was satisfied that the decision not to reduce the total amount of costs payable below that awarded by the Tribunal was properly taken. With regard to the Board Notice, the appropriateness of the contents appeared to have been considered by the High Court in respect of the application brought by the complainant to prevent its publication. The High Court refused that application, and the Commissioner was bound by that decision. However, on the basis of her own investigation, the Commissioner was anyway persuaded that the Board Notice was appropriate. The second and third components of the complaint were therefore not made out.

The Commissioner also considered that many of the matters raised by the complainant in the context of this complaint could have been brought before the Tribunal or could have been addressed in an appeal. The Commissioner observed that the Complaints Scheme is not, and should not be used as, a device by which to review decisions of Tribunals; this should be done within the scope of the appeals arrangements.

Allegations relating to a Board Notice and the response to representations

Complaint C was brought by two complainants. It concerned the publication by the SFA of a Board Notice about the activities of a company. The First Complainant made representations to the FSA questioning the accuracy and completeness of the Board Notice and expressed concern as to the penalties imposed.

The component of the complaint which fell within the scope of the Scheme was that the SFA and/or the FSA failed to deal properly with further representations made to them by the First Complainant and the Second Complainant in relation to the company and others by, for example, failing to interview them and failing to respond in a timely or appropriate way to their correspondence or to the First Complainant's reports. The Commissioner found that the SFA failed to establish whether an

SFA investigation into the representations made by the First Complainant in January 2000 in relation to the Board Notice might potentially prejudice certain SFO proceedings. She further found that the SFA failed to respond properly or reasonably to the First Complainant's representations contained in two letters, and that the SFA failed adequately to resolve the confusion between the SFA and the First Complainant which arose out of a meeting and failed to take the opportunity to resolve the confusion through a second interview with the First Complainant. The FSA did not accept this finding.

There was in the Commissioner's view also an unacceptable delay by the SFA in responding to a letter from the Second Complainant. In the light of these findings, the Complaints Commissioner recommended that the FSA should apologise to the First Complainant and Second Complainant for the SFA's failure to properly respond to certain letters. The FSA agreed.

Having regard to any protocol with the SFO and also to the usual restrictions on the provision of information to third parties by the FSA, the Commissioner recommended that the FSA should review and respond to certain letters of the First Complainant. The FSA agreed to this finding. It was further recommended that the FSA review its procedures to ensure that suitably-trained members of staff are allocated to deal with the liaison between the FSA and members of public who think they have information relevant to an FSA investigation and that procedures are in place for the prompt reply and follow up to correspondence received from such members of the public. The FSA responded that appropriate procedures were already in place and a review would not be an appropriate use of FSA resources, in particular in light of the exceptional circumstances of the case.

Complaint D concerned a pension mis-selling case referred to the FSA by the Financial Ombudsman Service (FOS), and the handling by the FSA of a complaint alleging failure to progress in a timely way their actions in relation to the matter of a regulated firm's failure to comply with a decision of the Ombudsman.

The substantive complaint was that the FSA failed to provide a promised 6-monthly progress report; that the complainant's dealings with the FSA when he contacted them were unsatisfactory; and, generally, that the FSA failed to progress in a timely way their actions in relation to the matter of the regulated firm's failure to comply with a decision of the Ombudsman once the Ombudsman had referred the case to them. A further complaint was made about the FSA's handling of contacts after the complaint was made, and, in particular, about the FSA's handling of a Stage 1 investigation.

The Commissioner found that the complainant was entitled to expect that the FSA would provide a written update on progress. This element of the complaint was made out. On the matter of unsatisfactory dealings with the FSA, the Commissioner found that the specific criticisms made by the complainant were not well-founded. The Commissioner noted, however, that there was no system for informing the complainant about the process his case was following. More recently a new pensions department has been set up to streamline processes and to achieve a better balance between the needs of consumers and firms.

The PIA did not, and the FSA does not, have powers to enforce FOS Awards directly. Pressure is applied indirectly, using regulatory means, to try to make firms comply. Regulatory action might not result in co-operation or in the Award being fully complied with. The complainant understood this but also considered that regulatory action would improve the prospects of success of any claim he might make via the Financial Services Compensation Scheme (FSCS). However, for the complainant timely action was of the utmost importance as his retirement date was fast approaching. The key question, in the Commissioner's view, therefore, was whether or not the FSA progressed the matter

Progress of actions in relation to a regulated firm's failure to comply with a decision of the Ombudsman

as rapidly as possible within the context of their own policies and of reasonable practices and procedures. The Commissioner found that once the case was passed to Enforcement more than a year passed before the RDC approved the emptying of the non-complying firm's permissions. The Commissioner considered that the case could and should have been progressed more quickly. Furthermore, an unnecessary delay was introduced while the FSA's internal complaints investigation was going on. The Commissioner noted that changes to approaches were being made during this time, and have been made subsequently. Nevertheless, this element of the complaint was made out.

With regard to the further complaint the Commissioner found that the FSA failed in a number of respects to follow appropriate procedures with regard to the complainant's original letter. There were also delays on the part of the Company Secretariat in responding to the complainant, and a failure to comply with Scheme procedures with regard to the decision whether or not to admit the complaint to the Scheme. Additionally, the conduct of the Stage 1 investigation exhibited some important deficiencies. Overall, the further complaint was found to be made out.

In the light of these findings the Complaints Commissioner recommended that the FSA should apologise to the complainant. The Commissioner was of the view that the FSA should review the position once the final outcome of the case was known and consider, in the light of this and in the event that he has suffered loss, making an ex gratia payment to the complainant as a gesture of goodwill. The complainant is understood to have later received compensation from the FSCS, and the FSA did not make an ex gratia payment.

The Commissioner considered that the FSA needed to improve its approach to its communications with consumers in relation to outstanding pensions review cases. The Commissioner welcomed the steps that had been taken and urged the FSA to take forward, as a priority, proposals for improved 'customer management' systems. The Commissioner further considered that the FSA should review its practices and procedures for progressing cases such as the complainant's through the enforcement process. New procedures have been introduced since the time the complainant's case was first passed to Enforcement but in her view these needed to be looked at in the light of the findings of this investigation.

The Commissioner recommended that procedures be reviewed to ensure that there was no repetition of the problems in the FSA's handling of complaints.

The FSA accepted that there were shortcomings in the way in which they handled this case and the resulting complaint. They apologised to the complaint for this. They noted that since the events described in the Commissioner's report, they had made significant changes to the way in which they processed pension review cases and in their procedures for handling consumer correspondence and complaints. They were of the view that, taken together, these changes reduced substantially the risk of the failures recurring. Moreover, for the future, the Financial Services and Markets Act puts investors such as the complainant in a better position to have Ombudsman's awards enforced through the courts than was the case under predecessor legislation.

Complainant E is the sole proprietor of a firm authorised for the provision of financial services, originally by the PIA and subsequently by the FSA. He had previously traded for both financial services and general insurance through a partnership which had been authorised firstly by FIMBRA and then by the IBRC. The partnership continued to have interim authorisation by the FSA until May 1999 when it was classified as a “departed” firm for life and pensions business. The PIA signed off the complainant’s sole proprietorship as having completed its pension review in 2001.

Customers of an IFA informed in error that the firm was no longer authorised

In 2001 the FSA sent a letter to firms they considered departed to seek who had taken responsibility for the clients. It appears that this letter was sent to the complainant’s previous firm, and to the old address. The complainant did not receive it. Therefore, in 2002, the FSA’s Pension Unit sent out in error approximately 230 letters to the complainant’s clients who had previously been sold a personal pension by the original partnership or who had been transferred to his agency for servicing purposes. The complainant discovered the mistake when he was contacted by clients, asking why they had been sent a letter from the FSA stating that his firm had ceased to be authorised and that they might be due compensation if they had been sold a personal pension and badly advised. He immediately contacted the FSA.

The Commissioner analysed the complaint as having two components. First, the original and substantive element of the complaint concerned the mailing of the complainant’s clients with erroneous information and how, when this mistake was brought to the attention of the FSA, the matter was handled. Second, there was the matter of how the FSA dealt with the complaint when formally notified of it.

The Commissioner found the first component of the complaint made out. The FSA did not link the information they held on the two firms. In particular it was not identified that the responsibility to carry out the pensions review had been transferred to the new sole proprietorship at the new address. This original error was then compounded as a result of the way in which the distribution of correspondence was handled by the FSA. The Commissioner found that, in implementing the arrangements for the pension review, the FSA made an error by failing to take some simple and low-cost checks. As a consequence letters were sent to the complainant’s clients that caused great concern, and resulted in the complainant suffering damage to his reputation. Once it was brought to the attention of the FSA, the Pensions Unit did respond promptly to try to contain the problem and offered an apology to the complainant and to his clients.

The Commissioner found that the FSA did not deal appropriately with the formal complaint, and this element of the complaint was therefore also made out. The FSA’s decision not to admit the complaint to the Scheme was not well-founded because, in the Commissioner’s view, the complaint focused on alleged administrative errors that were clearly within the scope of the Scheme. The FSA appears to have believed, incorrectly, that because some steps had been taken to remedy the error and an apology offered, the matter was resolved and it was therefore not necessary to admit the complaint to the Scheme. The FSA did not, when they wrote to the complainant provide a full and complete explanation of why the error had occurred, and their letter contained an inappropriate assertion.

In the light of these findings the Complaints Commissioner recommended that the FSA should apologise to the complainant for the error and for the failure to deal appropriately with the formal complaint. The Commissioner believed the FSA should make an ex gratia payment to the

complainant, and suggested that this should be in the amount of £5,000. The FSA accepted that there were shortcomings in the way in which they handled the case and the resulting complaint. They apologised to the complainant and made the ex gratia payment.

The Commissioner also recommended that when issuing important and sensitive correspondence the FSA should take steps to ensure dispatch and receipt, and/or issue at least one reminder for correspondence that requires an urgent reply. The FSA did not agree. In their view, the cost of using, for example, recorded delivery services would outweigh the benefits.

Minor shortcomings in correspondence and delays by the FSA

Complaint F has its origins in a dispute between the complainant and a financial services company, of which he had been an appointed representative specialising in the sale of low cost endowment policies in advance of taking out a mortgage. He ceased to be a representative in 1993 and felt that his treatment at the hands of the company in question had been biased and unfair. He communicated with LAUTRO and the PIA about this for a period of years and then referred a complaint about the PIA to the then PIA Complaints Commissioner. The complaint was not upheld. He continued to feel aggrieved and subsequently wrote a series of letters to the Chairman of the FSA. The FSA sent a substantive reply but the complainant remained dissatisfied, and contacted the Commissioner. It was necessary carefully to consider matters of jurisdiction, because the Commissioner is unable to re-open cases investigated and concluded under previous complaints arrangements. The Commissioner asked the FSA to review the case. They concluded that there were two matters that fell within the scope of the Scheme, and a Stage 1 investigation was carried out. The original dispute with the firm and the complaint about the PIA could not be investigated. The complainant was not satisfied with the response from the FSA and asked the Commissioner to conduct a Stage 2 investigation. The matters investigated were: possibly misleading statements in a letter sent by the FSA; and the associated matter of the FSA's delays in replying to the complainant's letters to the FSA Chairman on the subject.

In relation to the first component of the complaint, the Commissioner found that part of the wording of the letter was not actually incorrect but was unfortunately chosen and open to misinterpretation. In this one respect, therefore, this element of the complaint was upheld. In relation to the second component of the complaint, the Commissioner found that some delays had occurred and in these respects, therefore, this element of the complaint was upheld.

The Commissioner recommended that the FSA should apologise to the complainant for their choice of words in part of the letter and for the delays. The FSA accepted that there were minor shortcomings in their correspondence with the complainant, and apologised.

Responding to questions and requests, and the Stage 1 investigation process

Complainant G had two periods of correspondence with the FSA. During 2000, he was in correspondence with the FSA concerning his disagreement with his Renewal & Reconstruction Settlement at Lloyd's. This matter was concluded by the FSA in September 2000, and whilst not being the result the complainant had hoped for, was accepted.

In December 2001 the complainant wrote again to the FSA about a different matter. This related to a complaint he had against two firms of accountants acting in their capacity as liquidators of two insurance companies who had underwritten his personal stop loss policy between 1988 and 1990. His concern was about the interpretation of the clause in the policy as to whom the monies from the policies were to be paid. The complainant believed that the funds should be paid to him personally and not to the Lloyd's Premium Trust Fund.

The complaint had several components, of which the following two components fell within the Complaints Scheme. First, the complainant expressed dissatisfaction as to how the FSA had dealt with him after he wrote in December 2001. He had four specific concerns: the FSA's failure to understand or address the questions he raised in his letter; their failure to send his papers to the Financial Ombudsman Service (FOS) as he believed had been promised and their subsequent accusation that he was lying when he said that this had been promised; giving him incorrect and misleading information; and attempting to close the correspondence without giving appropriate help. Second, the complainant was dissatisfied that the FSA did not comply with their own standards relating to Stage 1 processes, including those relating to the time taken to respond to letters.

The Commissioner found the first component of the complaint to be made out. In responding to the complainant, the FSA misunderstood a request for assistance that was quite clearly couched. It seems probable that the FSA had harked back to the subject of their earlier dealings with the complainant in 2000 and had not focused on the fact that this later enquiry was about a different issue. The complainant waited for a reply to his questions for some ten weeks but when it came it failed to respond to the questions he had actually asked.

In relation to the matter of the complainant's papers and the FOS, it is not possible now to be certain as to the precise content of a telephone conversation. However, a subsequent letter from the complainant left no doubt that he wished his papers to go to FOS. Furthermore, a letter sent in response by the FSA led him to believe that his request was being implemented. Thus, when the FSA, writing two months later, categorically denied that there had been any undertaking to pass the complainant's papers to the FOS the complainant believed that, in making this denial, the FSA was accusing him of lying. The Commissioner is satisfied that this was not the FSA's intention; nonetheless, in the circumstances the complainant was understandably offended and upset.

In relation to the provision of information to the complainant, the FSA advised him that complaints against accounting firms should be sent to the Institute of Chartered Accountants in England and Wales. Whilst this was true, the FSA omitted to state that they also regulated for investment business one of the two firms about which the complainant had been enquiring. A later letter corrected the information about the regulators of the accounting firms but did not offer an apology.

In relation to the FSA's attempts to close the correspondence with the complainant, this was done in a way that, whilst no doubt not intended, gave offence to the complainant, who felt, rightly, that he had not had his points addressed fully and in a timely way.

The Commissioner also found the second component of the complaint made out. In her view the FSA failed to adhere to the agreed standards and procedures of the Complaints Scheme in relation to timescales; and in relation to the choice of individual to conduct the Stage 1 investigation and the conduct of the investigation itself.

In relation to the choice of individual to conduct the Stage 1 investigation, the chosen officer was the reporting supervisor of the three officers most closely involved in the matters complained of. The close reporting relationship rendered this an inappropriate choice. Furthermore, the officer signalled clearly from the outset that her independence with regard to this matter was questionable. Before starting her investigation, she made comments from which the Company Secretariat should have realised that an independent investigation could not be guaranteed as she appeared to have made up her mind ahead of the facts.

Moreover, the report prepared by the investigating officer was flawed. Important issues were ignored, suggesting that insufficient time and/or care was taken in reading the file. Most importantly, however, one key issue was wrongly assessed. It seems probable that, from the outset, the investigating officer was of the view that the complainant was alleging that a member of her team had lied to him. But the complainant was making no such allegation, as a careful read of the file should have revealed. Instead, he was complaining that he had been accused of lying. The investigation, and the report based upon it, cannot be said to have been undertaken carefully and impartially.

In the light of these findings, the Commissioner recommended that an apology should be given for the specific shortcomings identified. The FSA accepted that there were shortcomings and apologised. The Commissioner further recommended that all Stage 1 investigations under the Complaints Scheme are conducted by a senior member of staff who has not been involved in the matter and who will not show bias or favour. The FSA agreed with one reservation. They wished to retain discretion to invite local Directors and Heads of Department to carry out Stage 1 investigations in the interests of efficiency.

A small IFA unable to renew Professional Indemnity Insurance

Complaint H concerns the proprietor of a small Independent Financial Adviser (IFA) who was due to renew his professional indemnity insurance (PII) on 1 November 2002. Unable to obtain any cover, he wrote to the FSA for assistance. After an initial standardised response to which he replied explaining his circumstances and seeking help, he received no further replies to his original letter or to his subsequent two reminder letters until the FSA wrote in February 2003. Subsequently, he telephoned the FSA and corresponded with them. Still unable to obtain cover by March 2003, and with the prospect that he might have to apply to the FSA for a voluntarily suspension of his authorisation, the complainant took legal advice. The outcome was that he applied for a waiver that would allow him exemption from having to have PII. This was later issued.

The Commissioner has analysed the complaint as having four components. First, the complainant complained of lack of assistance and advice from the FSA when he wrote to them having not been able to obtain complying PII, including the failure by the FSA to acknowledge his correspondence. The Commissioner found that this element of the complaint was made out. The list of specialist brokers/underwriters enclosed with the standard letter was of very little use to him as only two of the twenty-four firms listed were in fact still offering cover. And when, following receipt of that letter, the complainant wrote three further times seeking help he received no acknowledgement. When the FSA next wrote to the complainant, more than two months later, it was a standardised "enforcement" letter from his reporting department. Whilst, after that letter, the FSA did then enter into more personalised correspondence with the complainant, they did not address the detail contained in his letters or answer his specific questions. The complainant had proactively taken steps to communicate with the FSA and had shown how he was attempting to comply with regulations but, due to market circumstances, had been unable to do so. A quick analysis of the correspondence should, in the Commissioner's view, have enabled the FSA to respond to the complainant in a more helpful fashion. It is noted that "Individual Guidance" could be given to a firm who had obtained non-complying PII, so the FSA was generally in a position to offer further assistance, but this was not proactively offered in this case.

Second, the complainant alleged a lack of knowledge shown by the FSA of the professional indemnity insurance market. The Commissioner found that this element of the complaint was not made out. The FSA may have given this impression due to the use of standardised correspondence that quoted from the rules which, whilst correct in text, was less than helpful in assisting a firm to find alternative ways to demonstrate compliance with those rules. Greater efforts could have been made to keep up-to-date the information on which firms were still active in the market. The

Commissioner found that, whilst the FSA may have been somewhat slow to appreciate the significance of the growing difficulties facing IFAs during 2002, once this was recognised the FSA did then respond to the problems that were caused partly by their PII requirements but mainly by the lack of market capacity. The FSA do not accept this as a fair summary of events.

Third, the complainant believes that the overall attitude shown by the FSA to his specific problem demonstrated a general lack of care on their part. The Commissioner considered in particular the contact and correspondence between the complainant and the FSA after the complainant lodged his complaint with the FSA. Around that same time he took legal advice and applied for a waiver. In this matter, the FSA adopted a more helpful and personal approach. They took no action against him whilst his application was being considered, and the matter was resolved quite speedily. This part of the complaint was not made out.

Fourth, the complainant alleged failure by the FSA to comply with the procedures and timescales for a Stage 1 investigation. This component of the complaint was made out. The report contained an inaccuracy. The officer who carried out the Stage 1 investigation and the officer who reviewed the draft response were in a close reporting relationship to officers closely involved in the matters complained of. The FSA do not agree that their choice of Stage 1 investigator was inappropriate.

In the light of these findings, the Commissioner recommended that a further apology be made for the inaccuracy, and asked the FSA to answer his queries and provide any further up-to-date information on other possible sources of cover. The FSA accepted that there were shortcomings in the way they handled the case and the resulting complaint. They apologised.

Further copies of this report can be obtained from

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